PROCEEDINGS

OF THE

American Society of International Law

AT ITS

NINTH ANNUAL MEETING

HELD AT

WASHINGTON, D. C.

DECEMBER 28-30, 1915

BYRON S. ADAMS, PRINTER
Washington, D. C.
1916

TABLE OF CONTENTS

FIFTH SESSION

THURSDAY, DECEMBER 30, 1915, 2 O'CLOCK P.M.

ANNUAL BANQUET

THE SHOREHAM HOTEL, THURSDAY, DECEMBER 30, 1915, 7 O'CLOCK P.M.

OFFICERS

OF THE

AMERICAN SOCIETY OF INTERNATIONAL LAW

FOR THE YEAR 1915–1916

PRESIDENT

HON. ELIHU ROOT

VICE-PRESIDENTS

CHIEF JUSTICE WHITE
JUSTICE WILLIAM R. DAY
HON. P. C. KNOX
MR. ANDREW CARNEGIE
HON. JOSEPH H. CHOATE
HON. JOHN W. FOSTER
HON. GEORGE GRAY
HON. WILLIAM W. MORROW
HON. RICHARD OLNEY
HON. HORACE PORTER
HON. OSCAR S. STRAUS
HON. JACOB M. DICKINSON
HON. JAMES B. ANGELL
HON. WILLIAM H. TAFT
HON. WILLIAM J. BRYAN
HON. ROBERT BACON
HON. ROBERT LANSING

EXECUTIVE COUNCIL

TO SERVE UNTIL 1916

HON. HENRY CABOT LODGE, Massachusetts
HON. FRANK C. PARTRIDGE, Vermont
PROF. LEO S. ROWE, Pennsylvania
FREDERIC R. COUDERT, ESQ., New York
EVERETT P. WHEELER, ESQ., New York
ALPHEUS H. SNOW, ESQ., D. C.
PROF. WILLIAM R. MANNING, Texas
PROF. JOHN H. LATANÉ, Maryland

TO SERVE UNTIL 1917

HON. RICHARD BARTHOLDT, Missouri
PROF. CHARLES NOBLE GREGORY, D. C.
PROF. AMOS S. HERSHEY, Indiana
HON. A. J. MONTAGUE, Virginia
REAR ADM. CHAS. H. STOCKTON, D. C.
CHARLES B. WARREN, ESQ., Michigan
HON. JOHN S. WILLIAMS, Mississippi
PROF. THEO. S. WOOLSEY, Connecticut

TO SERVE UNTIL 1918

HON. CHANDLER P. ANDERSON, New York
CHARLES HENRY BUTLER, ESQ., D. C.
PROF. GEORGE W. KIRCHWEY, New York
PROF. CHARLES CHENEY HYDE, Illinois
HON. JOHN B. MOORE, New York
JACKSON H. RALSTON, ESQ., D. C.
JAMES BROWN SCOTT, ESQ., D. C.
PROF. GEORGE G. WILSON, Massachusetts

EXECUTIVE COMMITTEE

Hon. Elihu Root
Hon. George Gray
Jackson H. Ralston, Esq.
Hon. Robert Lansing
Hon. John Bassett Moore
Prof. George G. Wilson
Hon. Oscar S. Straus

EX-OFFICIO

Hon. John W. Foster, chairman
James Brown Scott, Esq., recording secretary
Charles Henry Butler, Esq., corresponding secretary
Hon. Chandler P. Anderson, treasurer

EDITORIAL BOARD

OF THE

AMERICAN JOURNAL OF INTERNATIONAL LAW

James Brown Scott, editor-in-chief

Chandler P. Anderson
Charles Noble Gregory
Amos S. Hershey
David J. Hill
Charles Cheney Hyde
Robert Lansing
John Bassett Moore
Jesse S. Reeves
George G. Wilson
Theodore S. Woolsey

George A. Finch,
SECRETARY OF THE BOARD OF EDITORS AND BUSINESS MANAGER

COMMITTEES

Standing Committee on Selection of Honorary Members: George G. Wilson, Chairman; Jackson H. Ralston, Theodore S. Woolsey.

Standing Committee on Increase of Membership: James Brown Scott, Chairman; Charles Cheney Hyde, John H. Latané, Jesse S. Reeves, Theodore S. Woolsey.

Auditing Committee: Clement L. Bouvé, Jackson H. Ralston.

Committee on Codification: Elihu Root, Chairman, *ex officio;* Chandler P. Anderson, Charles Henry Butler, Lawrence B. Evans, Charles Noble Gregory, Robert Lansing, Paul S. Reinsch, Leo S. Rowe, James Brown Scott, George G. Wilson.

Committee on Publication of Proceedings: George A. Finch, Otis T. Cartwright.

Committee on Tenth Annual Meeting: James Brown Scott, Chairman; Philip Brown, James W. Garner, Robert Lansing, Walter S. Penfield, Jackson H. Ralston, Eugene Wambaugh.

CONSTITUTION

OF THE

AMERICAN SOCIETY OF INTERNATIONAL LAW[1]

ARTICLE I

Name

This Society shall be known as the American Society of International Law.

ARTICLE II

Object

The object of this Society is to foster the study of International Law and promote the establishment of international relations on the basis of law and justice. For this purpose it will coöperate with other societies in this and other countries having the same object.

ARTICLE III

Membership

Members may be elected on the nomination of two members in regular standing by vote of the Executive Council under such rules and regulations as the Council may prescribe.

Each member shall pay annual dues of five dollars and shall thereupon become entitled to all the privileges of the Society, including a copy of the publications issued during the year. Upon failure to pay the dues for the period of one year a member may, in the discretion of the Executive Council, be suspended or dropped from the rolls of membership.

Upon payment of one hundred dollars any person otherwise entitled

---

[1]The history of the origin and organization of the American Society of International Law can be found in the Proceedings of the First Annual Meeting at p. 23.

The Constitution was adopted January 12, 1906.

to membership may become a life-member and shall thereupon become entitled to all the privileges of membership during his life.

A limited number of persons not citizens of the United States and not exceeding one in any year, who shall have rendered distinguished service to the cause which this Society is formed to promote, may be elected to honorary membership at any meeting of the Society on the recommendation of the Executive Council. Honorary members shall have all the privileges of membership, but shall be exempt from the payment of dues.

Article IV

Officers

The officers of the Society shall consist of a President,[2] nine or more Vice-Presidents, the number to be fixed from time to time by the Executive Council, a Recording Secretary, a Corresponding Secretary, and a Treasurer, who shall be elected annually, and of an Executive Council composed of the President, the Vice-Presidents, *ex officio*, and twenty-four elected members, whose terms of office shall be three years, except that of those elected at the first election eight shall serve for the period of one year only and eight for the period of two years, and that any one elected to fill a vacancy shall serve only for the unexpired term of the member in whose place he is chosen.

The Recording Secretary, the Corresponding Secretary and the Treasurer shall be elected by the Executive Council from among its members. The other officers of the Society shall be elected by the Society, except as hereinafter provided for the filling of vacancies occurring between elections.

At every annual election candidates for all offices to be filled by the Society at such election shall be placed in nomination by a Nominating Committee of five members of the Society previously appointed by the Executive Council, except that the officers of the first year shall be nominated by a committee of three appointed by the Chairman of the meeting at which this Constitution shall be adopted.

All officers shall be elected by a majority vote of members present and voting.

All officers of the Society shall serve until their successors are chosen.

---

[2]See Amendments, Article 1, p. x.

Article V

Duties of Officers

1. The President shall preside at all meetings of the Society and of the Executive Council and shall perform such other duties as the Council may assign to him. In the absence of the President at any meeting of the Society his duties shall devolve upon one of the Vice-Presidents to be designated by the Executive Council.

2. The Secretaries shall keep the records and conduct the correspondence of the Society and of the Executive Council and shall perform such other duties as the Council may assign to them.

3. The Treasurer shall receive and have the custody of the funds of the Society and shall disburse the same subject to the rules and under the direction of the Executive Council. The fiscal year shall begin on the first day of January.

4. The Executive Council shall have charge of the general interests of the Society, shall call regular and special meetings of the Society and arrange the programs therefor, shall appropriate money, shall appoint from among its members an Executive Committee and other committees and their chairmen, with appropriate powers, and shall have full power to issue or arrange for the issue of a periodical or other publications, and in general possess the governing power in the Society, except as otherwise specifically provided in this Constitution. The Executive Council shall have the power to fill vacancies in its membership occasioned by death, resignation, failure to elect, or other cause, such appointees to hold office until the next annual election.

Nine members shall constitute a quorum of the Executive Council, and a majority vote of those in attendance shall control its decisions.

5. The Executive Committee shall have full power to act for the Executive Council when the Executive Council is not in session.

6. The Executive Council shall elect a Chairman, who shall preside at its meetings in the absence of the President, and who shall also be Chairman of the Executive Committee.

Article VI

Meetings

The Society shall meet annually at a time and place to be determined by the Executive Council for the election of officers and the transaction of such other business as the Council may determine.

Special meetings may be held at any time and place on the call of the Executive Council or at the written request of thirty members on the call of the Secretary. At least ten days' notice of such special meeting shall be given to each member of the Society by mail, specifying the object of the meeting, and no other business shall be considered at such meeting.

Twenty-five members shall constitute a quorum at all regular and special meetings of the Society and a majority vote of those present and voting shall control its decisions.

Article VII

Resolutions

All resolutions which shall be offered at any meeting of the Society shall, in the discretion of the presiding officer, or on the demand of three members, be referred to the appropriate committee or the Council, and no vote shall be taken until a report shall have been made thereon.

Article VIII

Amendments

This Constitution may be amended at any annual or special meeting of the Society by a majority vote of the members present and voting. But all amendments to be proposed at any meeting shall first be referred to the Executive Council for consideration and shall be submitted to the members of the Society at least ten days before such meeting.

Amendment

Article I[3]

Article IV is hereby amended by inserting after the words "The officers of the Society shall consist of a President," the words "an Honorary President."

---

[3]This amendment was adopted at the business meeting held April 24, 1909.

NINTH ANNUAL MEETING

OF THE

AMERICAN SOCIETY OF INTERNATIONAL LAW

SHOREHAM HOTEL, WASHINGTON, D. C.
DECEMBER 28–30, 1915

FIRST SESSION

Joint Session of the Society and the Subsection on International Law of the Second Pan American Scientific Congress

Tuesday, December 28, 1915, 8 o'clock p.m.

The ninth annual meeting of the American Society of International Law, held in connection with the Subsection on International Law of the Second Pan American Scientific Congress, was called to order by the President of the Society, the Honorable ELIHU ROOT.

The PRESIDENT. Gentlemen of the Subsection on International Law of the Pan American Scientific Congress, gentlemen of the American Society of International Law, and ladies: It gives me great pleasure to act as the spokesman for the American Society of International Law in welcoming all of you who are our guests at this our annual meeting, and especially to welcome the coöperation and union of the members of the Pan American Scientific Congress in this effort towards the promotion of the science which underlies and is the basis of all international good understanding.

It has been customary in the past at meetings of the American Society of International Law for the presiding officer to begin the meeting by a very informal statement of the principal and most significant events in international law and diplomacy during the preceding year. That I shall omit. I shall hold that the terrible events which have happened during the past year are within the knowledge of all and that they are beyond the power of anyone's description, and shall pass immediately and ask your attention to some observations upon the outlook for international law.

THE OUTLOOK FOR INTERNATIONAL LAW

OPENING ADDRESS OF ELIHU ROOT
President of the Society

The incidents of the great war now raging affect so seriously the very foundations of international law that there is for the moment but little satisfaction to the student of that science in discussing specific rules. Whether or not Sir Edward Carson went too far in his recent assertion that the law of nations has been destroyed, it is manifest that the structure has been rudely shaken. The barriers that statesmen and jurists have been constructing laboriously for three centuries to limit and direct the conduct of nations toward each other, in conformity to the standards of modern civilization, have proved too weak to confine the tremendous forces liberated by a conflict which involves almost the whole military power of the world and in which the destinies of nearly every civilized state outside the American continents are directly at stake.

The war began by a denial on the part of a very great Power that treaties are obligatory when it is no longer for the interest of either of the parties to observe them. The denial was followed by action supported by approximately one-half the military power of Europe and is apparently approved by a great number of learned students and teachers of international law, citizens of the countries supporting the view. This position is not an application of the doctrine *rebus sic stantibus* which justifies the termination of a treaty under circumstances not contemplated when the treaty was made so that it is no longer justly applicable to existing conditions. It is that under the very circumstances contemplated by the treaty and under the conditions for which the treaty was intended to provide the treaty is not obligatory as against the interest of the contracting party.

This situation naturally raises the question whether executory treaties will continue to be made if they are not to be binding, and requires consideration of a system of law under which no conventional obligations are recognized. The particular treaty which was thus set aside was declaratory of the general rule of international law respecting the inviolability of neutral territory; and the action which ignored the treaty also avowedly violated the rule of law, and the defense is that for such a violation of the law the present interest of a sovereign state is justification. It is plain that the application of

such a principle to a matter of major importance at the beginning of a long conflict must inevitably be followed by the setting aside of other rules as they are found to interfere with interest or convenience; and that has been the case during the present war. Many of the rules of law which the world has regarded as most firmly established have been completely and continuously disregarded, in the conduct of war, in dealing with the property and lives of civilian non-combatants on land and sea and in the treatment of neutrals. Alleged violations by one belligerent have been asserted to justify other violations by other belligerents. The art of war has been developed through the invention of new instruments of destruction and it is asserted that the changes of conditions thus produced make the old rules obsolete.

It is not my purpose at this time to discuss the right or wrong of these declarations and actions. Such a discussion would be quite inadmissible on the part of the presiding officer of this meeting. I am stating things which, whether right or wrong, have unquestionably happened, as bearing upon the branch of jurisprudence to which this Society is devoted. It seems that if the violation of law justifies other violations, then the law is destroyed and there is no law; that if the discovery of new ways of doing a thing prohibited justifies the doing of it, then there is no law to prohibit. The basis of such assertions really is the view that if a substantial belligerent interest for the injury of the enemy come in conflict with a rule of law, the rule must stand aside and the interest must prevail. If that be so it is not difficult to reach the conclusion that for the present, at all events, in all matters which affect the existing struggle, international law is greatly impaired. Nor can we find much encouragement to believe in the binding force of any rules upon nations which observe other rules only so far as their interest at the time prompts them. Conditions are always changing and a system of rules which cease to bind whenever conditions change should hardly be considered a system of law. It does not follow that nations can no longer discuss questions of right in their diplomatic intercourse, but upon such a basis it seems quite useless to appeal to the authority of rules already agreed upon as just and right and their compelling effect because they have been already agreed upon.

When we recall Mansfield's familiar description of international law as "founded upon justice, equity, convenience, the reason of the thing, and confirmed by long usage," we may well ask ourselves whether that general acceptance which is necessary to the establishment of a rule

of international law may be withdrawn by one or several nations and the rule be destroyed by that withdrawal so that the usage ceases and the whole subject to which it relates goes back to its original status as matter for new discussion as to what is just, equitable, convenient and reasonable?

When this war is ended, as it must be some time, and the foreign offices and judicial tribunals and publicits of the world resume the peaceable discussion of international rights and duties, they will certainly have to consider not merely what there is left of certain specific rules, but also the fundamental basis of obligation upon which all rules depend. The civilized world will have to determine whether what we call international law is to be continued as a mere code of etiquette or is to be a real body of laws imposing obligations much more definite and inevitable than they have been heretofore. It must be one thing or the other. Although foreign offices can still discuss what is fair and just and what is expedient and wise, they can not appeal to law for the decision of disputed questions unless the appeal rests upon an obligation to obey the law. What course will the nations follow?

Vague and uncertain as the future must be, there is some reason to think that after the terrible experience through which civilization is passing, there will be a tendency to strengthen rather than abandon the law of nations. Whatever the result may be, the world will have received a dreadful lesson of the evils of war. The sacrifice of millions of lives, millions homeless and in poverty, industry and commerce destroyed, overwhelming national debts—all will naturally produce a strong desire to do something that will prevent the same thing happening again.

While the war has exhibited the inadequacy of international law, so far as it has yet developed, to curb those governmental policies which aim to extend power at all costs, it has shown even more clearly that little reliance can be placed upon unrestrained human nature, subject to specific temptation, to commit forcible aggression in the pursuit of power and wealth. It has shown that where questions of conduct are to be determined under no constraint except the circumstances of the particular case, the acquired habits of civilization are weak as against the powerful, innate tendencies which survive from the countless centuries of man's struggle for existence against brutes and savage foes. The only means yet discovered by man to limit those tendencies consist in the establishment of law, the setting up of prin-

ciples of action and definite rules of conduct which can not be violated by the individual without injury to himself. That is the method by which the wrongs naturally flowing from individual impulse within the the state have been confined to narrow limits. That analogy, difficult as it is to maintain in view of the differences between the individual who is subject to sovereignty and the nation which is itself sovereign, indicates the only method to which human experience points to avoid repeating the present experience of these years of war consistently with the independence of nations and the liberty of individuals. The *Pax Romana* was effective only because the world was subject to Rome. The Christian Church has been urging peace and good will among men for nineteen centuries, and still there is this war. Concerts of Europe and alliances and *ententes* and skillful balances of power all lead ultimately to war. Conciliation, good will, love of peace, human sympathy, are ineffective without institutions through which they can act. Only the possibility of establishing real restraint by law seems to remain to give effect to the undoubted will of the vast majority of mankind.

In the effort to arrange the affairs of the world so that they will not lead to another great catastrophe, men will therefore turn naturally towards the reëstablishment and strengthening of the law of nations. How can that be done? How can the restraints of law be made more effective upon nations?

It is not difficult to suggest some things which will tend in that direction.

Laws to be obeyed must have sanctions behind them; that is to say, violations of them must be followed by punishment. That punishment must be caused by power superior to the law breaker; it can not consist merely in the possibility of being defeated in a conflict with an enemy; otherwise there would be no law as between the strong and the weak. Many states have grown so great that there is no power capable of imposing punishment upon them except the power of collective civilization outside of the offending state. Any exercise of that power must be based upon public opinion. It can not rest merely upon written agreements or upon the accidental dictates of particular interests. It must proceed from general, concurrent judgment and condemnation. When that exists, punishment may be inflicted either by the direct action of governments, forcible or otherwise, or by the terrible consequences which come upon a nation that finds itself with-

out respect or honor in the world and deprived of the confidence and good will necessary to the maintenance of intercourse. Without such an opinion behind it, no punishment of any kind can be imposed for the violation of international law.

For the formation of such a general opinion, however, questions of national conduct must be reduced to simple and definite form. Occasionally there is an act the character of which is so clear that mankind forms a judgment upon it readily and promptly, but in most cases it is easy for the wrongdoer to becloud the issue by assertion and argument and to raise a complicated and obscure controversy which confuses the judgment of the world. There is but one way to make general judgment possible in such cases. That is by bringing them to the decision of a competent court which will strip away the irrelevant, reject the false, and declare what the law requires or prohibits in the particular case. Such a court of international justice with a general obligation to submit all justiciable questions to its jurisdiction and to abide by its judgment is a primary requisite to any real restraint of law.

When we come to consider the working of an international court, however, we are forced to realize that the law itself is in many respects imperfect and uncertain. There is no legislature to make laws for nations. There is no body of judicial decisions having the effect of precedent to declare what international laws are. The process of making international law by usage and general acceptance has been necessarily so slow that it has not kept pace with the multiplying questions arising in the increasing intercourse of nations. In many fields of most fruitful controversy different nations hold tenaciously to different rules, as, for recent example, upon the right of expatriation, upon the doctrine of continuous voyages, upon the right to transfer merchant vessels after the outbreak of a war. Yet any attempt to maintain a court of international justice must fail unless there are laws for the court to administer. Without them the so-called court would be merely a group of men seeking to impose their personal opinions upon the states coming before them. The lack of an adequate system of law to be applied has been the chief obstacle to the development of a system of judicial settlement of international disputes. This is well illustrated by the history of the convention for an international prize court adopted by the Second Hague Conference. The Conference agreed to establish such a court and provided in Article 7 of the treaty that in the absence of special treaty provisions governing the case

presented "the court shall apply the rules of international law. If no generally recognized rule exists, the court shall give judgment in accordance with the general principles of justice and equity." When the question of ratifying this treaty was presented to the Powers whose delegates had signed it, some of them awoke to the fact that upon many subjects most certain to call for the action of a court there was no general agreement as to what the rules of international law were, and that different nations had different ideas as to what justice and equity would require, and that each judge would naturally follow the views of his own country. Accordingly the Conference of London was called, and met in December, 1908. In that Conference the delegates of the principal maritime Powers came to agreement upon a series of questions and they embodied their agreement in the 71 articles of the Declaration of London. If that Declaration had been ratified by all the Powers in the Conference, it would doubtless have been accepted as a statement of the international law upon the subjects covered. But it was not ratified, and so the Prize Court Treaty remains ineffective because the necessary basis for the action of the court is wanting.

It is plain that in order to have real courts by which the legal rights of nations can be determined and the conduct of nations can be subjected to definite tests, there must be a settlement by agreement of old disputes as to what the law ought to be and provision for extending the law over fields which it does not now cover. One thing especially should be done in this direction. Law can not control national policy, and it is through the working of long-continued and persistent national policies that the present war has come. Against such policies all attempts at conciliation and good understanding and good will among the nations of Europe have been powerless. But law, if enforced, can control the external steps by which a nation seeks to follow a policy, and rules may be so framed that a policy of aggression can not be worked out except through open violations of law which will meet the protest and condemnation of the world at large, backed by whatever means shall have been devised for law enforcement.

There is another weakness of international law as a binding force which it appears to me can be avoided only by a radical change in the attitude of nations towards violations of the law.

We are all familiar with the distinction in the municipal law of all civilized countries, between private and public rights and the remedies for the protection or enforcement of them. Ordinary injuries and

breaches of contract are redressed only at the instance of the injured person, and other persons are not deemed entitled to interfere. It is no concern of theirs. On the other hand, certain flagrant wrongs the prevalence of which would threaten the order and security of the community are deemed to be everybody's business. If, for example, a man be robbed or assaulted, the injury is deemed not to be done to him alone, but to every member of the state by the breaking of the law against robbery or against violence. Every citizen is deemed to be injured by the breach of the law because the law is his protection, and if the law be violated with impunity, his protection will disappear. Accordingly, the government, which represents all its citizens, undertakes to punish such action even though the particular person against whom the injury was done may be content to go without redress. Up to this time breaches of international law have been treated as we treat wrongs under civil procedure, as if they concerned nobody except the particular nation upon which the injury was inflicted and the nation inflicting it. There has been no general recognition of the right of other nations to object. There has been much international discussion of what the rules of law ought to be and the importance of observing them in the abstract, and there have been frequent interferences by third parties as a matter of policy upon the ground that specific, consequential injury to them might result from the breach; but, in general, states not directly affected by the particular injury complained of have not been deemed to have any right to be heard about it. It is only as disinterested mediators in the quarrels of others or as rendering good offices to others that they have been accustomed to speak of it at all. Until the First Hague Conference that form of interference was upon sufferance. In the Convention for the Pacific Settlement of International Disputes, concluded at that Conference, it was agreed that in case of serious trouble or conflict, before an appeal to arms the signatory Powers should have recourse to the good offices or mediation of foreign Powers, and Article 3 also provided:

> Independent of this recourse, the signatory Powers recommend that one or more Powers strangers to the dispute should on their own initiative and as far as circumstances may allow, offer their good offices or mediation to the states at variance. Powers strangers to the dispute have a right to offer good offices or mediation even during the course of hostilities. The exercise of this right can never be regarded by one or other of the parties in conflict as an unfriendly act.

These provisions are a considerable step towards a change in the theory of the relation of third Powers to an international controversy. They recognize such an independent interest in the prevention of conflict as to be the basis of a right of initiative of other Powers in an effort to bring about a settlement. It still remains under these provisions, however, that the other Powers assert no substantive right of their own. They are simply authorized to propose an interference in the quarrels of others to which they are deemed to be strangers. The enforcement of the rules of international law is thus left to the private initiative of the country appealing to those rules for protection, and the rest of the world has in theory and in practice no concern with the enforcement or non-enforcement of the rules.

If the law of nations is to be binding, if the decisions of tribunals charged with the application of that law to international controversies are to be respected, there must be a change in theory, and violations of the law of such a character as to threaten the peace and order of the community of nations must be deemed to be a violation of the right of every civilized nation to have the law maintained and a legal injury to every nation. When a controversy arises between two nations, other nations are indeed strangers to the dispute as to what the law requires in that controversy, but they can not really be strangers to a dispute as to whether the law which is applicable to the circumstances shall be observed or violated. Next to the preservation of national character, the most valuable possession of all peaceable nations, great and small, is the protection of those laws which constrain other nations to conduct based upon principles of justice and humanity. Without that protection, there is no safety for the small state, except in the shifting currents of policy among its great neighbors, and none for a great state, however peaceable and just may be its disposition, except in readiness for war. International laws violated with impunity must soon cease to exist, and every state has a direct interest in preventing those violations which, if permitted to continue, would destroy the law. Wherever in the world the laws which should protect the independence of nations, the inviolability of their territory, the lives and property of their citizens, are violated, all other nations have a right to protest against the breaking down of the law. Such a protest would not be an interference in the quarrels of others. It would be an assertion of the protesting nation's own right against the injury done to it by the destruction of the law upon which it relies for its

peace and security. What would follow such a protest must in each case depend upon the protesting nation's own judgment as to policy, upon the feeling of its people and the wisdom of its governing body. Whatever it does, if it does anything, will be done not as a stranger to a dispute or as an intermediary in the affairs of others, but in its own right for the protection of its own interest. Upon no other theory than this can the decisions of any court for the application of the law of nations be respected, or any league or concert or agreement among nations for the enforcement of peace by arms or otherwise be established, or any general opinion of mankind for the maintenance of law be effective.

Can any of these things be done? Can the law be strengthened and made effective? Imperfect and conflicting as is the information upon which conjecture must be based, I think there is ground for hope that from the horrors of violated law a stronger law may come. It was during the appalling crimes of the Thirty Years' War that Grotius wrote his *De Jure Belli ac Pacis* and the science of international law first took form and authority. The moral standards of the Thirty Years' War have returned again to Europe with the same dreadful and intolerable consequences. We may hope that there will be again a great new departure to escape destruction by subjecting the nations to the rule of law. The development and extension of international law has been obstructed by a multitude of jealousies and supposed interests of nations each refusing to consent to any rule unless it be made most favorable to itself in all possible future contingencies. The desire to have a law has not been strong enough to overcome the determination of each nation to have the law suited to its own special circumstances; but when this war is over the desire to have some law in order to prevent so far as possible a recurrence of the same dreadful experience may sweep away all these reluctances and schemes for advantage and lead to agreement where agreement has never yet been possible. It often happens that small differences and petty controversies are swept away by a great disaster, deep feeling, and a sense of common danger. If this be so, we can have an adequate law and a real court which will apply its principles to serious as well as petty controversies, and a real public opinion of the world responding to the duty of preserving the law inviolate. If there be such an opinion it will be enforced. I shall not now inquire into the specific means of enforcement, but the means can be found. It is only when opinion is

uncertain and divided or when it is sluggish and indifferent and acts too late that it fails of effect. During all the desperate struggles and emergencies of the great war, the conflicting nations from the beginning have been competing for the favorable judgment of the rest of the world with a solicitude which shows what a mighty power even now that opinion is.

Nor can we doubt that this will be a different world when peace comes. Universal mourning for the untimely dead, suffering and sacrifice, the triumph of patriotism over selfishness, the long dominance of deep and serious feeling, the purifying influences of self-devotion, will surely have changed the hearts of the nations, and much that is wise and noble and for the good of humanity may be possible that never was possible before.

Some of us believe that the hope of the world's progress lies in the spread and perfection of democratic self-government. It may be that out of the rack and welter of the great conflict may arise a general consciousness that it is the people who are to be considered, their rights and liberties to govern and be governed for themselves rather than rulers' ambitions and policies of aggrandizement. If that be so, our hopes will be realized, for autocracy can protect itself by arbitrary power, but the people can protect themselves only by the rule of law.

The PRESIDENT. Next upon our program is an address by Hon. John Bassett Moore, formerly Counsellor for the Department of State, on "The relation of international law to national law in American countries," and I take great pleasure in presenting him.

THE RELATION OF INTERNATIONAL LAW TO NATIONAL LAW IN THE AMERICAN REPUBLICS

ADDRESS OF DR. JOHN BASSETT MOORE

The present address is not concerned with the question whether the law of nations, or international law, is to be placed in the same legal category as national or municipal law—a question I discussed elsewhere a year ago.[1] It relates simply to the attitude of the authorities, legislative, administrative and judicial, of the American countries towards international law and its enforcement. It may be superfluous to say

[1]Law and Organization: Presidential Address at the Eleventh Annual Meeting of the American Political Science Association, Chicago, Dec., 1914. *The American Political Science Review*, February, 1915.

that international law, in the sense in which the term is commonly understood, had its origin among the so-called Christian states of Europe. In consequence, all European states and all states inheriting European civilization are assumed to be bound by it. By Article VII, however, of the Treaty of Paris of March 30, 1856, Turkey was expressly admitted "to participate in the advantages of the public law and system of concert of Europe." With this act, the classification of states that were subject and those that were not subject to international law as Christian and non-Christian ceased to be applicable, and its inapplicability became only the more pronounced with the acceptance of the system by Japan and other non-Christian countries.

In regard to the countries of America, there never was any question as to their position or their obligation, since all of them, as they now exist, were of European origin, having been at one time or another the colonies of European Powers. The first of them to become independent—the United States of America—acted from the outset upon the principle that it was subject to what was then generally known as the law of nations, but is now commonly called international law. Long prior to the formation of the Constitution of the United States, while the loose national association formed by the Articles of Confederation was still in existence, the so-called Federal Court of Appeals declared that "the municipal laws of a country can not change the law of nations so as to bind the subjects of another nation." (Case of the *Resolution*, 2 Dallas, 1, 4.) In 1796, seven years after the establishment of the government under the Constitution, Mr. Justice Wilson, sitting in the Supreme Court, declared that, "when the United States declared their independence, they were bound to receive the law of nations in its modern state of purity and refinement." (Ware *v.* Hylton, 3 Dallas, 199, 281.) By the Constitution itself international law was indeed expressly recognized. Such recognition is seen in the provision that Congress shall have power to define and punish piracies and felonies committed on the high sea, "and offences against the law of nations." (Article I, Section 8, clause 10.) Moreover, in order that the law of nations might be duly observed, it was provided that the judicial power of the United States should extend to all cases arising under treaties made under the authority of the United States, to all cases affecting ambassadors, other public ministers and consuls, to controversies to which the United States should be a party and to controversies between a State or the citizens thereof and foreign

states, citizens, or subjects, and that in all cases affecting ambassadors, other public ministers and consuls and those in which a State should be a party, the Supreme Court should have original jurisdiction. (Article III, Section 2, clauses 1 and 2.) Finally, it was declared that all treaties which had been or which should be made "under the authority of the United States," should be "the supreme law of the land," binding upon the judges in every State, in spite of any clause to the contrary in its constitution or laws. (Article VI, Section 2.)

The fact having thus been avowed that the new nation called the United States of America was subject to the law of nations, it was only natural and logical that the courts should proceed upon the principle that international law was a part of the law of the land, and as such to be interpreted and applied in the causes coming before them. This was a principle of the English common law. In 1764 one of the most celebrated of English judges, Lord Mansfield, quoted the opinion of a great predecessor, Lord Talbot, to the effect "that the law of nations, in its full extent, was part of the law of England," and that it was to be "collected from the practice of different nations, and the authority of writers." The writers consulted, there being then no English writer of eminence on the subject, were Grotius, Barbeyrac, Bynkershoek, Wicquefort and other continental publicists. Lord Mansfield also recalled Lord Hardwicke both as declaring an opinion to the same effect and as "denying that Lord Chief Justice Holt ever had any doubt as to the law of nations being part of the law of England." (Triquet *v.* Bath, 3 Burrows, 1478.) Upon the strength of these authorities, an eminent judge at Philadelphia, prior to the formation of the Constitution of the United States, sustained an indictment founded on the common law for an offence against the law of nations (Respublica *v.* DeLongchamps, 1 Dallas, III). In 1793, Thomas Jefferson, the first Secretary of State of the United States, declared that "the law of nations makes an integral part * * * of the laws of the land." (Wait's American State Papers, 1, 30.) In 1815, Chief Justice Marshall, in deciding a case before the Supreme Court, declined to accept the contention that the judicial tribunals should, on the ground of retaliation, apply to Spain a rule respecting captures different from that prescribed by the law of nations. Till Congress should pass a retaliatory act, he declared that the court was "bound by the law of nations, which is a part of the law of the land." (*The Nereide,* 9 Cranch, 388, 423.) In consonance with this doctrine, the law of

nations does not have to be proved to the court as a fact. (*The Scotia*, 14 Wallace, 170.)

On the authority of these official utterances, Sir Henry Maine was justified in declaring that the statesmen and jurists of the United States did not regard international law as having become binding on their country through any legislative act; that they looked upon it as an integral part of the conditions on which a state is originally received into the family of civilized nations; and that their view, being essentially the same as that entertained by the founders of the system, might be summed up by saying that the state which disclaimed the authority of international law places itself outside the circle of civilized nations. (Maine, International Law, 37–38.)

Apart from certain special and exceptional clauses, which, as found in a few of the national constitutions, have given rise to international controversy, and the terms and effect of which will be discussed farther on, it may be unhesitatingly affirmed that the principles above set forth prevail throughout the American Republics. In the spirit of those principles, the Constitution of Argentina, following substantially the terms of that of the United States, declares that "treaties with foreign Powers are the supreme law of the nation, binding upon the provincial authorities, notwithstanding any contrary provision in the provincial constitutions or laws" (Part First, Sole Chapter, Art. 31); that the Supreme Court of the nation shall have jurisdiction of all cases involving foreign treaties or concerning ambassadors, public ministers and consuls, and of all cases between a province or its citizens and a foreign citizen or state; and that, in cases concerning foreign ambassadors, ministers or consuls, or to which a province shall be a party, the jurisdiction of the national Supreme Court shall be original and exclusive." (Part Second, Title First, Section Third, Chapter II, Articles 100 and 101.)

The Constitution of Brazil contains a significant clause, investing Congress with exclusive power to authorize the government to declare war, "when arbitration has failed or can not take place." (Article 34, clause 11.) This recognition of the obligatory force of international law is altogether remarkable and commendable. By the same Constitution, the Federal Supreme Court has original and exclusive jurisdiction of "disputes and claims between foreign nations and the Union, or between foreign nations and the States" (Article 59). The jurisdiction of the federal judges and courts also embraces suits between

foreign states and Brazilian citizens; actions instituted by foreigners, founded on contracts with the federal government, or on conventions or treaties between the Union and other nations; questions relating to maritime law and the navigation of the ocean; and questions of international criminal or civil law.

The Constitution of Colombia of 1863 expressly declared, "The law of nations forms part of the national legislation;" and although a similar clause is not found in the Constitution of 1886, or in the amendments subsequently adopted, the authorities of the country are understood, in their treatment of neutrality and other questions, to have acknowledged the continuing force of the principle.

The Constitution of the Dominican Republic of 1896, while investing the Supreme Court with jurisdiction of all civil and criminal cases against diplomatic functionaries "when permitted by the law of nations" (Art. 69), explicitly provided that "the law of nations is made a part of the law of the Republic." (Art. 106.) Although this last clause is not found in the Dominican Constitution of 1908, there are other provisions in which the underlying principle is clearly recognized. Thus, in language similar to that employed by the Constitution of the United States, the Congress is empowered to grant letters of marque and reprisal, to regulate matters of prize, to define acts of piracy and offences against the law of nations, and to affix the penalties. (Dominican Constitution, 1908, Art. 29.) Furthermore, the government is forbidden to declare war without having previously proposed arbitration; and, in order that the application of this principle may be assured, it is provided that there shall be introduced, in all international treaties made by the Republic, the clause: "All differences which may arise between the contracting parties must be submitted to arbitration before an appeal is made to war." (*Ibid.*, Art. 102.)

The Constitution of Honduras confers upon the Supmere Court jurisdiction of prize cases and cases of extradition, as well as of all other cases that are to be settled according to international law. (Art. 107, paragraph 5).

By the Constitution of Uruguay, the High Court of Justice has "original jurisdiction" of "crimes or offences against the law of nations," of "questions growing out of treaties or negotiations with foreign Powers," and of "cases in which ambassadors, ministers and other foreign diplomatic agents are concerned" (Art. 96).

These constitutional provisions merely acknowledge, either expressly or by implication, the obligatory force of international law in matters to which it is properly applicable. The same principle has often been consecrated in judicial and administrative decisions in the American countries. It is further exemplified in the proclamations, decrees and circulars which they have been accustomed to issue in the enforcement of their neutrality, as may be seen in the collection of neutrality proclamations and decrees printed by the United States in 1898, and in the volume lately published by the eminent and learned Chilean authority, Dr. Alejandro Alvarez, on the neutrality of his country in the present European war.[2]

In this relation I may mention a case, somewhat exceptional in its circumstances, of which erroneous versions have sometimes been given. I refer to the case of José Dolores Gamez, in Nicaragua. Señor Gamez, a political refugee from that country, took passage early in 1885 on the Pacific Mail Steamer *Honduras* at San José, Guatemala, for Punta Arenas, in Costa Rica. When the steamer, in the regular course of her voyage between those ports, arrived at San Juan del Sur, in Nicaragua, the *comandante* of the port requested her commander, Captain McCrae, to deliver Gamez up, and, on his refusal to do so, declined to give him a clearance. Captain McCrae then sailed away without proper papers, and for this act was charged, before the criminal court of first instance at Rivas, under Article 177 of the Nicaraguan Penal Code, with the offense of "want of respect for the authorities," in having openly resisted or disobeyed them. Sentence was rendered on February 9, 1885. The court held (1) that the "open resistance or disobedience" to authority, which was essential to the crime in question, was not "clearly shown," because, while it was true that Captain McCrae did not comply with the command of the *comandante,* it was also true that the obligation to do so "did not exist," or at least was "doubtful," and still more so in the form in which the demand was made, since, although the ship was a merchant vessel and therefore, "according to the general principles of international law" subject to the local jurisdiction, this subjection "according to those same principles," was not absolute; (2) that the fact that Señor Gamez took passage on the steamer "from one of the ports of the other republics of Central America," rendered the obligation to deliver him up "still

[2] *La Grande Guerre Europeenne et la Neutralité du Chile,* Paris, A. Pedone, 1915.

more doubtful," because, said the court, "when certain cases have arisen analogous to the one under consideration among nations more civilized than our own, it has been alleged, as a reason to justify the delivery, that both the embarking of the passenger, as well as his delivery, must be made in national waters"; (3) that Señor Gamez, as appeared by the papers, was accused, not of common crimes, but of political offenses, under a decree of September 9, 1884, and that it was "a doctrine universally accepted in the works of writers on international law" that, although merchant vessels were subject to the local jurisdiction as regarded persons accused of common crimes, they were "exempt from the jurisdiction" as regards persons accused of political offenses, all of which relieved the captain from the obligation of making the delivery demanded of him. In support of these views, the court cited Bello, *Principios de Derecho Internacional* (Paris, 1882, Cap. IV, No. 8, pp. 72-73), and Calvo, *Derecho Internacional* (Paris, 1868, part 1, Cap. V, Sec. 200, pp. 316-317). It was accordingly adjudged that the charge of disrespect was not established; and this sentence was affirmed by the Supreme Court at Granada, in 1892, without an additional statement of reasons. The case is interesting as showing how national legislation was interpreted and enforced in the light of what was understood by the court to be the rule of international law.[3]

A question much discussed in the American countries is that of the nature and limits of diplomatic intervention, particularly in behalf of private aliens. This question has been discussed chiefly with reference to the attitude of individual governments towards the employment by the alien's government of the diplomatic processes recognized by international law.[4]

In a few instances express provisions on the subject are found. In the national Constitution of Guatemala, it is provided that "foreigners shall not resort to diplomatic action except in case of a denial of justice," and that "final decisions adverse to the claimant shall not be understood as denials of justice." Substantially the same rule is found in the Constitution of Honduras, which provides (Art. 15) that "foreigners shall not resort to diplomatic intervention except in case of

---

[3]A fuller statement of the case may be found in Moore's Digest of International Law, II, 868-870.

[4]See, generally, Borchard's Diplomatic Protection of Citizens Abroad, or the Law of International Claims, and, particularly, Chapter VII, pp. 836-860, on "Limitations Arising out of Municipal Legislation of the Defendant State."

manifest denial of justice, abnormal delays, or self-evident violation of the principles of international law," and that "the fact that a final decision is not favorable to the claimant shall not be construed as a denial of justice." Likewise, the Constitution of Nicaragua declares that "foreigners shall not resort to diplomatic interposition." Except that the Constitutions of Honduras and Nicaragua impose as a penalty for any violation of the inhibition, the loss of the right to reside in the country, these provisions may be regarded as declaratory of an established principle of international law.

The subject of diplomatic intervention in behalf of private aliens was discussed in connection with the phrase "denial of justice," at the Third International American Conference at Rio de Janeiro in 1906, on the occasion of the renewal of the treaty concluded at the Second International American Conference at Mexico in 1902, for the arbitration of pecuniary claims. This treaty required the high contracting parties to submit to arbitration "all claims for pecuniary loss or damage," presented by their respective citizens, which could not be "amicably adjusted through diplomatic channels," when the claims were important enough to justify the expense. In the report adopted at Rio de Janeiro, on the renewal of this treaty, it was assumed that the cases intended to be covered were those in which diplomatic intervention was justified, it being the sovereign right of each independent Power to regulate by its laws and to judge by its tribunals the juridical acts consummated in its territory, "except in cases where, for special reasons, of which the law of nations takes account, the question is converted into one of an international character." This thought was most admirably elucidated by one of the delegates of Brazil, Dr. Gastao da Cunha, who, after expressing his concurrence in the view above stated, remarked that the phrase "denial of justice" should, subject to the above qualification, receive the most liberal construction, so as to embrace all cases where a state should fail to furnish the guarantees which it ought to assure to all individual rights. The failure of guarantees did not, he declared, "arise solely from the judicial acts of a state. It results," he continued, "also from the act or omission of other public authorities, legislative and administrative. When a state legislates in disregard of rights, or when, although they are recognized in its legislation, the administrative or judicial authorities fail to make them effective, in either of these cases the international responsibility of the state arises. In all those cases, inasmuch as it is

understood that the laws and the authorities do not assure to the foreigner the necessary protection, there arises contempt for the human personality and disrespect for the sovereign personality of the other state, and, in consequence, a violation of duty of an international character, all of which constitutes for nations a denial of justice."

At the Fourth International American Conference, at Buenos Aires, it was proposed in committee to supplement the treaty of Mexico not only with an unexceptionable provision obligating the arbitral tribunal to decide in accordance with the principles of international law, but also with a stipulation that, if a question should arise between the high contracting parties as to whether a case covered by international law and justifying diplomatic intervention had arisen, this difference should be submitted to the arbitral tribunal as a "previous" or preliminary question, the solution of which might or might not authorize the tribunal to take cognizance of the merits of the case. In support of this proposal, a passage was quoted from an official note of the Argentine plenipotentiaries to the representative of the Italian Government, as to the interpretation of the Argentine-Italian treaty of arbitration. This passage, by which it was declared that a foreign state was not obliged to accept the judgment of the local tribunals if it believed that they were not competent, or if they had decided contrary to the principles of international law, but that, as between civilized states, the territorial judges should be presumed to act justly, at least to the extent that diplomatic action should not be initiated till they had rendered their sentence, and then only when the sentence was contrary to international law, may be treated as a statement of a general principle. But it did not seem completely to support the proposal that the question of the right or propriety of diplomatic intervention might, if raised, be treated as a preliminary question to be determined apart from the merits of the case. One of the members of the committee therefore took the ground that it was not practicable to lay down in advance precise and unyielding formulas by which the question of a denial of justice might in every instance be determined, or to treat it as a preliminary question which might be decided apart from the merits of the case; that, in the multitude of cases that had, during the preceding hundred and twenty years, been disposed of by international arbitration, the question of a denial of justice had arisen in many and in various forms that could not have been foreseen; that human intelligence could not forecast the forms in which it might arise again, but

that in the future, as in the past, it would be disposed of by the amicable methods of diplomacy and arbitration, and in a spirit of mutual respect and conciliation. The other members of the committee declared that they accepted these declarations, since they considered that they were in no way inconsistent with what had been set forth in the report.

The question of the liability of a government for the acts of insurgents has often been treated as presenting a special phase of the right of diplomatic intervention under international law. Calvo, the great protagonist of the limitation of the right of intervention in such cases, declared that, to admit the principle of responsibility and indemnity "would be to create an exorbitant and pernicious privilege, essentially favorable to strong states and injurious to feebler nations, and to establish an unjustifiable inequality between nationals and foreigners." (*Droit Int.*, III, p. 1280.)

Clauses designed to give effect to this view may be found in the Constitution of Guatemala, which provides (Art. 14) that "neither Guatemalans nor foreigners shall in any case have the power to claim from the government indemnification for damages arising out of injuries done to their persons or property by revolutionists"; in the Constitution of Haiti, which provides (Art. 185) that no Haitian or foreigner shall be entitled to claim indemnity for "losses sustained by virtue of civil and political trouble," but that the injured party shall have the right to seek reparation by prosecuting the authors of the wrongs in the courts; in the Constitution of Salvador, which contains a clause (Art. 46) to the same effect, coupled, however, with the singular provision (Art. 68, paragraph 29) that no treaty or convention shall be made "which in any way restricts or affects the exercise of the right of insurrection," and in the Constitution of Venezuela, which declares (Art. 17) that no indemnity shall be claimed by any one for losses "not caused by lawful authorities acting in their public capacity," and forbids (Art. 18) any treaty to the contrary to be made.

The principle enunciated by Calvo was accepted by Wharton, in his Digest of International Law (II, 576, p. 223), to the extent of declaring that "a sovereign is not ordinarily responsible to alien residents for injuries they receive on his territory * * * from insurgents whom he could not control"; and from this source it has passed, to the extent indicated, into various subsequent utterances of the Department of State of the United States. To the same extent it was adopted by the late Spanish Treaty Claims Commission, at Washing-

ton, which, moreover, took "judicial notice" of the fact that the Cuban insurrection of 1895 at once passed beyond the general control of the Spanish authorities, and therefore required claimants, in order to obtain an award, affirmatively to show that those authorities had in the particular instance the power actually to prevent the wrong but refused or failed to exercise it. Beyond this, the assertion of exemption from liability has not been sanctioned and probably would not be permitted in any case to be maintained.

There yet remains to be considered an effort that has been made to guard against diplomatic interposition in respect of claims growing out of alleged breaches of contract. In the Constitution of Ecuador of 1897 it was provided (Art. 38) that every contract of an alien with the government or with a private Ecuadorean "shall carry with it implicitly the condition that all diplomatic claims are thereby waived"; but, by the subsequent amendatory act of June 13th of the same year, it was declared that this "shall not cover cases in which the enforcement of judicial decisions or of arbitral awards in favor of foreign contractors has been refused," the parties injured thereby having "the right to resort to diplomatic intervention, according to the principles of public law." By this amendment the attempted safeguard was materially modified; but the provisions of the act of June 13, 1897. are not included in the Ecuadorean Constitution of 1906, which renews (Art. 23) the terms of Art. 38 of the Constitution of 1897.

It is chiefly in Venezuela, however, that the question has been put to a practical test. The successive constitutions of the country have made ample acknowledgment of the obligatory force of international law. By the Constitution of 1904 the Supreme Federal Court was invested with power to take cognizance of "civil or criminal prosecutions against diplomatic agents, in the cases allowed by the public law of nations," as well as to hear and determine prize cases. (Article 95, paragraphs 3 and 7.) The Constitution further provided that, in all international treaties, a clause should be inserted to the effect that "all differences between the contracting parties shall be decided by arbitration without appeal to war." (Art. 120.) The Constitution also contained the explicit declaration that "the law of nations forms part of the laws of the country," but this was qualified by the further declaration that the provisions of the law of nations "shall not be invoked when they are opposed to the Constitution and the laws of the republic." (Art. 125.)

Interpreted in one sense, this qualification might be regarded as a denial of the obligatory force of international law, and as having been intended to assert the position that a country can fix the measure of its international obligations, not only by its Constitution, but also by the laws which its legislature may from time to time prescribe. I am not, however, inclined to give to the qualification this sweeping interpretation which, if admitted, would destroy the foundations of international law. I am, on the contrary, disposed to interpret it in the following senses:

1. Although it may not be so in all countries, yet it is no doubt the case in many countries, including the United States, that an act of the supreme legislative power violative of the law of nations will be enforced by the public authorities, judicial and administrative, the foreign government being left to assert its rights through the diplomatic channel. In this respect the clause of the Venezuelan Constitution is not exceptional.

2. Apart from what is set forth in the preceding paragraph, it is probable that the clause in question was intended to give a special sanction, among other things, to Article 124, which declared that no contract of public interest entered into by the Federal Government or by any public authority should be assignable to any foreign government, and that in all contracts there should be included, and if omitted, should be considered as included, the following clause: "The doubts and controversies of any nature that may arise in regard to this contract, and which can not be amicably settled by the contracting parties, shall be decided by the competent tribunals of Venezuela, according to the Venezuelan laws, and shall not in any case be made a subject of international claims."

Provisions similar to those just quoted are included in the Venezuelan Constitution of April 19, 1914, except Article 125, *supra*.[5]

Clauses such as this, when actually embodied in contracts, have on several occasions been discussed by international commissions, with results not entirely harmonious. In some cases they have been re-

---

[5]Art. 95, paragraphs 3 and 7, of the Constitution of 1904, become Art. 98, paragraphs 3 and 7, of the Constitution of 1914; Art. 124 of the Constitution of 1904 is Art. 121 of the Constitution of 1914. For Art. 120 of the Constitution of 1904, *supra*, there is substituted, with the same number, in the Constitution of 1914, the following:

"In international treaties there shall be inserted the clause that 'All differences between the contracting parties, relative to the interpretation or execution of this treaty, shall be decided by arbitration.'"

garded merely as devices to curtail or exclude the right of diplomatic intervention, and as such have been pronounced invalid. In other cases they have been treated as effective, to the extent of making the attempt to obtain redress by local remedies absolutely prerequisite to the resort to international action. Only in one or two doubtful instances does the view seem to have been entertained that they should be permitted to exclude diplomatic interposition altogether.[6]

On the whole, the principle has been well maintained that the limits of diplomatic action are to be finally determined, not by local regulations, but by the generally accepted rules of international law.

The PRESIDENT. I have now great pleasure in introducing to you Mr. George G. Wilson, Professor of International Law in Harvard University, who will address us upon the same subject.

THE RELATION OF INTERNATIONAL LAW TO NATIONAL LAW IN AMERICAN STATES

ADDRESS OF GEORGE GRAFTON WILSON,
Professor of International Law in Harvard University

International law presupposes the existence of states. In the early days the idea of a state was somewhat vague and often varied. The modern idea of a state as a sovereign political unity carries with it certain presumptions which were not admitted in Europe till after the Peace of Westphalia in 1648.

It was but natural that the proximity and consequent intercourse of states upon the European continent should make necessary a system of reasonable action in their mutual relations. In its beginnings international law looked to this system of conduct for its principles. The states following this common system gradually formed a circle or family of nations assuming that others, if admitted to the family, should accept the system adopted by the family. The standards adopted by the family of nations, though not clearly established at the beginning, gradually became well-defined. The standards were naturally European because determined by European conditions and thought. The family was for a time spoken of as the family of Christian nations, but this claim was set aside and the political basis became the test of admittance to the international circle.

---

[6]Moore, Digest of International Law, VI, 301–308.

When the plan of the family of nations was developing, one of the prime objects was the maintenance of the balance of power in Europe. The Treaty of Utrecht in 1713 is a little broader in extending its aims to the establishment of peace and tranquillity in Christendom through a just equilibrium of powers. European congresses were frequently held for this purpose. The disturbance of the *status quo* came in Europe to be regarded as a violation of international law. The *status quo* had been established after many and long struggles. The *status quo* seemed to have historically justifiable foundations, such as the grant of privileges by kings or emperors, the union of crowns by marriage or inheritance or by acts of those who had the right to rule. Revolution would therefore be regarded as one of the most doubtful foundations upon which a claim to membership in the family of nations could be based.

The recognition of the United States as equal by France in the treaty of 1778 was therefore a recognition of a political unity based upon revolution as well as the recognition of a state outside of the geographical area of Europe. This precedent, set by France and soon followed by other European states, gave to the right of revolution a sanction which later some of these states would gladly have recalled, as Metternich thought when he described political revolution as something which should be suppressed by common measures and should "be treated as hostile to all lawful constitutions and governments." Revolution, however, became the source of the right to existence among American states, forming a marked contrast to the accepted doctrines of the European family of nations. Thus the basis of national law was for America in the recognition of the right of revolution, for revolution is at the beginning of nearly all the American states.

In America, not merely was the basis of the right of the state to be recognized by international law different from the generally accepted European doctrines, but the residence of political power was different. The concept of the "paramount authority of the public will" had already been set forth in doctrinaire treatises, but its practical embodiment in a political unity was not thought reasonable. Metternich characterized "the idea of emancipation of the peoples as absurd in itself," his doctrine being accepted by the rulers, to the effect that good government could come only from those who were by birth divinely appointed to rule. He did not regard masses as dangerous, but considered the middle class desiring political privileges as seized with a sort of "moral gangrene." Voltaire's idea was altogether different, and had influence

certainly in France when he described society as like a keg of beer, "froth at the top, dregs at the bottom, and wholesome in the middle." Metternich, dominating European international opinions so generally in the early half of the nineteenth century, could not even conceive of a lawful state organized by men who had as "their war cry, 'constitution' "; and he says, "We are not alone in questioning if society can exist with liberty of the press, a scourge unknown to the world before the latter half of the seventeenth century and restrained until the eighteenth." Such an attitude is in strong contrast to the constitutional provisions which were being inserted in the fundamental laws of American states in the years of Metternich's power in Europe. In the American constitutions, freedom of speech and freedom of the press were inserted as basic principles.

The accepted and long-recognized European claim of the right of intervention was denied by the American states. Meantime some of the rulers of Europe, denying the "paramount authority of the public will" and upholding "benevolent despotism," maintained that, entrusted by divine power and "placed beyond the passions which agitate society," they should "not abandon the people whom they ought to govern to the sport of factions, to error and its consequences, which must involve the loss of society." The American position, clearly and at times forcefully expressed, has been in general that there is in international law no right of intervention, but that there is the obligation of non-intervention—a position widely separating for a time the European and American theories.

The American continent, with its vast resources and area open to occupation and cultivation, afforded a tempting field for emigration. This movement of population to the American continent was favored while the area was European colonial territory. After the colonies broke off from the mother countries, the stream continued. The vigorous young life of the old countries was departing. This was welcomed in the new world across the sea. Doctrines of naturalization were developed and a theory of expatriation, entirely contrary to that of many European states, received support in America. The common European doctrine that allegiance was indelible and that the children followed the nationality of the parents, the *jus sanguinis,* was denied in some American states, leading to long conflicts, which in the latter part of the nineteenth century were solved by a general recognition in international relations of the right of expatriation.

Not merely in these broader aspects of international law has the New World reacted upon the Old, but in many more special lines the national attitude toward law and justice has found response in approval by international conventions, congresses, practice, and law. Some examples of this may serve to illustrate many. Thus in the broader aspects of international law, particularly relating to the acquisition and exercise of territorial jurisdiction, American states, because of their development to some extent in an area not previously politically organized, made clear the law in regard to national title by occupation. Of this Chief Justice Marshall speaks for the American continent when he says in Johnson *v.* McIntosh in 1828:

> The potentates of the Old World found no difficulty in convincing themselves that they made ample compensation to the inhabitants of the New, by bestowing on them civilization and Christianity, in exchange for unlimited independence. But, as they were nearly all in pursuit of the same object, it was necessary, in order to avoid conflicting settlements and consequent war with each other, to establish a principle which all should acknowledge as the law by which the rights of acquisition, which they all asserted, should be regulated as between themselves. This principle was that discovery gave title to the government by whose subjects, or by whose authority, it was made, against all other European governments, which title might be consummated by possession. The exclusion of all other Europeans necessarily gave to the nation making the discovery the sole right of acquiring the soil from the natives, and establishing settlements upon it.

This same principle was recognized in regard to islands off Peru and islands off Venezuela when these were beyond the three-mile limit. Other and numerous controversies in regard to boundaries have arisen among the American states. Doctrines of prescription, of occupation, of accretion and other principles relating to territorial rights have been given general recognition.

As to the coast waters, there has been a tendency to accept the three-mile limit and to recognize the freedom of the seas and the right of innocent navigation. The Argentine Republic and Chile in 1881, by the treaty of July 23, agreed that "Magellan's Straits are neutralized forever, and free navigation is guaranteed to the flags of all nations. To insure this liberty and neutrality no fortifications or military defences shall be created that could interfere with this object."

Free navigation of rivers in American states has likewise been generally granted. Occasionally this has been limited to states having territory on a river. The treaty between the Argentine Republic and the United States of America in 1853 granted reciprocal freedom of river navigation. The South American states negotiated many of these treaties among themselves.

In these new lands another question, early requiring consideration and remaining to the present time, is that of boundary lines. The uncertainty as to limits of territory was but natural. Surveys, if made at all, were usually hasty and inaccurate or indefinite. Friction among these young and growing states on account of growth was inevitable. Here ancient grants and modern claims often clashed, but these boundary disputes have usually been settled by application of equitable principles rather than by resort to war. The principle of *uti possidetis* was frequently recognized, but whatever the principle of decision, the resort to arbitration became common and this form of settlement of disputes among American states grew in strength and favor. When the long and heated controversy over the Brazilian-Argentine boundary line was, by the arbitral award of President Cleveland of the United States, settled in 1895 in a manner favorable to the contention of Brazil, the attitude of the Argentine Republic became not that of a defeated suitor, but that of a friend of its late opponent, rejoicing in the settlement of the difference and the removal of a cause of friction. Scarcely could the American ideal be more strikingly expressed than in the reply of the Argentine Minister to the Brazilian Secretary of State for Foreign Affairs, when in behalf of the Argentine Republic, even when Argentine's claim had not been maintained, he said, "I regard the question under arbitration which has just been decided as a triumph of both our nations, which equally strong, patriotic, and virile, have sought on the ground of right and justice a noble solution of controversies which can never be definitively settled by the transitory and ephemeral right of force."

Not merely were territorial rights developed and an accepted international practice in regard to title to land recognized, but the rights of nationals in American states were guarded. The bills of rights in many American constitutions contained declarations similar to the following:

> The rights of man are the basis of and object of social institutions. Consequently this state declares that all the laws and all

> the authorities of this country must respect and maintain the guarantees which the present constitution establishes.

The constitutional and legal guarantees of nationals were necessarily maintained in international relations and in the treaties, particularly between American states. These treaties often secured the rights of the nationals of one state when within the jurisdiction of another. The rights of man as such assumed a much more important place than formerly in international agreements. One of the earliest of these treaties, negotiated between the United States of America and the Republic of Colombia in 1824, provides for the freedom of citizens of each within the territory of the other, not only in navigation and commerce, but also in matters of the exercise of judicial rights, and further in Article XI:

> It is likewise agreed that the most perfect and entire security of conscience shall be enjoyed by the citizens of both the contracting parties in the countries subject to the jurisdiction of the one and the other, without their being liable to be disturbed or molested on account of their religious belief, so long as they respect the laws and established usage of the country.

This was repeated in other treaties of this period, emphasizing one of the principles for which American civilization has often stood. Other rights of man as such were protected in international agreements as in domestic law. The bill of rights often embodied in the constitution gave to the national security and freedom within his own state, and this became general for the American states through most favored nation clauses and reciprocal agreements. This right of man to protection and freedom was recognized in America as inherent in man himself, and not, as in many European states, derived by a grant from some authority above.

As political freedom was one of the corner-stones of the idea of American state policy, this principle was protected in national laws and received conventional sanction in international agreements. Naturally this protection for political freedom was guaranteed in extradition treaties by limitation upon the list of extraditable crimes in such manner as to exclude extradition of political offenders as criminals. This was often but a carrying of the national laws or national constitution into international agreements, as in the case of the Mexican treaties of extradition—treaties which conform to the article of the Mexican

Constitution which provides, "Treaties shall never be made for the extradition of political offenders." (Article 15.)

Not merely have the American states stood for the right of man to political freedom, but for his right to freedom of conscience and expression, even in speech and press, in order that the spirit of man may not be repressed or compelled to conform itself to standards externally imposed. What this contribution to the development of the human race may mean, when embodied in world practice, it is difficult to foretell.

It is true that the national law of American states embodied many principles that were regarded as visionary and idealistic, as was shown in the opinions of Metternich and others of his period, yet these states have had the courage and wisdom to maintain these principles, till now they meet with growing recognition in the world. The American states have not been afraid to test the principles of arbitration and judicial methods of settling disputes among themselves. Two American republics were the first parties to appear before the Hague tribunal to test the merits of the newly established international court of arbitration and to demonstrate its right to claim a place as one of the greatest institutions for the furthering of international justice.

The American nations have proven their ideals workable in the international relations of the states upon the Western Continent, and perhaps, when contrasted with European, practice, in no manner more strikingly than in the protection of national territorial limits. Along thousands of miles of frontier in all the Americas not massive fortifications and armed forces, but simple boundary posts, supported by the confidence in the supremacy of national and international law, have been the most effective safeguards of the rights of jurisdiction and of peaceful possession.

As was said by Secretary of State Root at the University of San Marcos, Lima, September 14, 1906:

> All international law and international justice depend upon national law and national justice. No assemblage of nations can be expected to establish and maintain any higher standard as between each other than that which each maintains within its own borders. Just as the standard of justice and civilization in a community depends upon the individual character of the elements of the community, so the standard of justice among nations depends upon the standard established in each individual nation.

Thus in American states law, proceeding from and resting upon the fundamental rights of the nationals under its jurisdiction, has in the national sphere been formulated to meet the needs of all. That such principles should be recognized in international law is but natural, since the broad principles of equity and fair dealing must be even more pervasive in the sphere of international relations. That these principles are to have more weight in international affairs is evident when the growing participation of American states in the councils of nations is considered. At the first International Conference at The Hague in 1899, of the twenty-six Powers whose plenipotentiaries assembled, two only were American and four others non-European; and even then the voice of America was heeded, as it stood for the reign of law. At the Second International Conference at the Hague in 1907, of the forty-four Powers whose plenipotentiaries assembled, eighteen were American and four others were non-European. That American ideals must receive consideration in these conferences of nations requires then no theoretical demonstration. These American ideals of justice and of the rights of man have passed from the national laws into international agreements and practice, though up to the present time often without any purposeful and coöperating effort upon the part of American states. The American principles of right and justice have been tested and found good for the development of mankind and the maintenance of peace, both in national and international life. In the twentieth century the American nations have been admitted to full participation in the councils of the world where international law is formulated. The dreams of the founders of these states have been realized, yet the possibilities of the greater triumph of the fundamental principles of the national law of American states in the sphere of international relations is a vision, possible of realization through the intelligent coöperation of the American nations working unselfishly for the international ideal, the well-being of mankind.

The PRESIDENT. I have the pleasure now of presenting to you Dr. Norman Dwight Harris, Professor of Diplomacy and International Law in Northwestern University, who will address us upon the subject of "The duties and obligations of neutral governments, parties to the Hague conventions, in case of actual or threatened violations by belligerents of the stipulations of the said conventions."

THE DUTIES AND OBLIGATIONS OF NEUTRAL GOVERNMENTS, PARTIES TO THE HAGUE CONVENTIONS, IN CASE OF ACTUAL OR THREATENED VIOLATIONS BY BELLIGERENTS OF THE STIPULATIONS OF THE SAID CONVENTIONS

ADDRESS OF NORMAN DWIGHT HARRIS,

Professor of Diplomacy and International Law in Northwestern University

The present great European conflict has drawn in a striking manner the attention of all students of international law, and of all thinking men to the so-called laws of neutrality. Not only has a sort of cynical skepticism arisen in certain quarters as to the real value of such laws; but it has also become apparent to the careful observer that the existing rules governing the relations between neutrals and belligerents have proved woefully inadequate to meet the conditions created by the present unprecedented international situation. If all the belligerents and neutrals had honestly tried to live up to the obligations imposed upon them by the laws of neutrality, the existing rules even then would not have sufficed to enable the European states to meet all the demands of the present emergency in an equitable manner. Important changes in the methods of modern warfare alone have been sufficient to render desirable the modification of a number of rules heretofore deemed wise and useful. But the deliberate and, in some cases, unjustifiable violations of generally accepted principles by certain belligerents have made the situation much worse. And the tragic fate of Belgium, the pressure put on certain of the smaller Powers to induce them to join the belligerents or to permit infractions of their neutrality, and the enormous expense and heavy burden imposed upon those neutral countries whose territories unfortunately border upon the theater of the war, to prevent the invasion or misuse of their possessions, have laid upon an ill-defined neutrality code a burden much too heavy for it to bear, and one that it really was not intended to carry.

To discuss this topic intelligently, we must, then, summarize briefly what are the duties and obligations of neutrals and of belligerents, draw attention to the chief inadequacies of these rules as applied to modern conditions, and suggest, if we can, some method by which these rules may be amended to meet the new situation, to secure protection for neutrals and to compel obedience by belligerents.

The duties and obligations of neutral states may be embraced in "three classes involving respectively, abstention, prevention and acquiescence," as Professor Thomas E. Holland[1] has so succinctly put it. The present paper is confined in its discussion to the last two divisions: the preventing of belligerents from violating neutral territory or waters, and the acquiescence of neutral states in any act of a belligerent that would violate the laws of neutrality. The efforts of neutral governments to carry out these obligations have been rendered doubly difficult by two things: the lack of carefully defined regulations governing the action of neutrals, and the defiant position assumed by the military authorities of belligerent states. The public action of neutral governments has unfortunately never been as distinctly elaborated in any form as the duties of the citizens or subjects of neutral states have been. This has been due chiefly to certain inherent though not unsurmountable difficulties, and to the natural desire of states not to see any restraint placed upon their power of independent action, nor to have the field of their political activities limited.[2] On the other side, belligerent states have hesitated to place any serious limitations upon the movements of their military forces. The true instructions of a belligerent state to its generals are always, as Professor Westlake so accurately describes them,[3] "Succeed—by war according to its laws, if you can—but, at all events and in any way, succeed."

Another curious but important impediment has stood in the way, both of the clear interpretation of the laws of neutrality, and of their enforcement. This is the complete failure of international conventions and of most writers on international law to define satisfactorily the duties of belligerents towards neutrals. It is impossible to draft a complete and workable code of neutrality and to ignore the correlative obligations of belligerents.

Convention V of the Hague Conference of 1907 is devoted to articles "respecting the rights and duties of neutral Powers"; and most writers on international law—(even so careful an author as Westlake)—discuss the "laws of neutrality"—under the topic: Rights and Obligations of Neutral States, with little or no reference to the duties and obligations of belligerents. Wherever the latter are mentioned, it

---

[1] "Neutral Duties in a Maritime War," Proceedings of the British Academy, II, 2.

[2] John Westlake, International Law, Pt. II, p. 204.

[3] John Westlake, International Law, Pt. II, p. 117.

usually is a repetition of the former rules, or a negative statement of a command to neutrals.

During the last fifty to sixty years, the laws of neutrality have been elaborated along certain fundamental lines through the efforts of a number of leading states, chief among which has been the United States; but they have dealt very largely with the duties of neutrals. And, through the adoption of these rules, neutral states secured a recognition of their rights and a regular standing in international law. The work of the Second Hague Conference was devoted, in large part, to the elaboration of the laws of neutrality in connection with the law of war on land and of naval warfare. Among the leading principles accepted at this Conference and approved by practically all the states are the following:

1. "The territory of neutral Powers is inviolate;"[4]
2. Troops or convoys of either munitions of war or supplies can not be moved across neutral territory by belligerents.[4]
3. Neutral territory must not be used as a base for wireless stations, prize courts, recruiting offices, supplies, or for military or naval operations by any belligerent Power. [4 and 5]
4. Warships must not be built, equipped or manned in neutral ports or waters for belligerents.[5]
5. Neutral states must preserve a strictly impartial attitude towards all belligerents, and their governments officially give no aid, supplies, money or loans to either side. [4 and 5]

A careful distinction is made, however, between the rules governing the action of belligerents on sea and those on land. The use of neutral land by belligerents is strictly forbidden; but innocent passage through the territorial waters of neutral states is permissible, particularly where the water in question is a strait or channel connecting two portions of the open sea. Belligerent ships may take refuge under stress of weather, or obtain coal and supplies sufficient to reach the next port, in neutral waters; but they must not use the same as a base of operations or a place in which to lay in wait for or to attack the enemy. Neutrals, however, may regulate the use of their own territorial waters[6] and are

---

[4]Convention V, Rights and Duties of Neutral Powers in War on Land, Arts. 1, 2, 3, 4, and 11.

[5]Convention V, Rights and Duties of Neutral Powers in Naval War, Arts. 4, 5, 6, 8 and 9.

[6]*Compare* Scott, Hague Conferences, II, 632–33.

held responsible for the infractions of their waters and neutrality. Neutrals may exclude belligerents from their territorial waters if it is apparent that the passage of belligerent forces through those waters will jeopardize their neutrality. Ships or military forces that violate neutral waters or territory must be interned till the end of the war. If a belligerent attacks the ships of another within the territorial waters of a neutral, or an act harmful to another state occurs on neutral territory, it is incumbent on that neutral to take prompt steps to prevent such violations and to demand the proper apologies and indemnities in case the violations actually take place.

In these and in all cases where the inviolability of neutral territory and the position of neutral states and their citizens are threatened, the burden of preventing infractions of neutral laws is laid upon the neutral Powers. If they take every reasonable precaution and make an honest effort with all the means at their disposal to prevent violations of their neutrality, they can not be held legally responsible for the acts of violence. The means that should be used by a neutral to preserve its neutrality or to prevent a misuse of its territory or territorial waters, and the extent to which it should use these means and its powers to enforce neutral rights have not yet been fully defined. As a result of the three rules of the Treaty of Washington and the decision in the case of the *Alabama,* it was laid down that a neutral must exercise "due diligence." This term is obviously open to various interpretations; and the definition of the tribunal that "due diligence ought to be exercised by neutral governments in proportion to the risks to which either of the belligerents may be exposed from a failure to fulfil the obligations of neutrality on their part" was never generally accepted. The Hague Conference interpreted this to mean that a "neutral Power is bound to exercise such surveillance as the means at its disposal allow to prevent any violation" of the rules governing neutrality agreed upon by the Conference.[7] This is the present status and is as far as the states have been willing to commit themselves, for no one can reasonably expect a neutral state to do more to fulfil its neutral obligations than it is able to do with the means and powers at its disposal.

Prompt warnings and threats to withdraw from belligerents the innocent use of territorial waters are no doubt legitimate means open

---

[7]Convention V. Rights and Duties of Neutral Powers in Naval War. Arts. 2 and 5. Compare with interpretation in *Le Deuxième Conférence de la Paix.* Acts and Documents, Vol. III, pp. 511–12, Art. 25.

to neutral states. Prompt protests ought always to be the first act of a neutral whenever any infraction of its rights or territory is imminent or has taken place without warning. Every effort should be made diplomatically to induce the belligerents to respect the rights and territories of neutrals. A neutral is not obliged to protest against or punish for acts in violation of the neutrality of other neutral states, or for acts in violation of its neutrality not done on its own territory. The use of force by neutral nations to preserve their neutrality is justifiable, when all peaceful means fail. The Hague Convention of 1907 was unanimous in declaring that "the fact that a neutral Power resists even by force attempts to violate its neutrality, can not be regarded as a hostile act."[8] This exercise of the right to employ force should, however, be used with caution, for it may react in a most undesirable way upon the user. In the case of small neutral states, they may be forced in spite of themselves into a position of belligerency. And more powerful belligerents may also be drawn into the conflict if they appeal too hastily and bruskly to forcible measures. It is probable that more can be accomplished in the direction of securing obedience to the laws of neutrality and protection for the rights of neutrals through the exercise of a consistent and firm policy by all neutral states in defense of the existing rules and by a general coöperation in the enforcement of the same. Belligerents have always been quick to note looseness or remissness on the part of neutral states and to hold them to a strict account. Huge indemnities have had to be paid, as in the case of the *Alabama* and sister ships built in England during the Civil War, for lack of care in the enforcement of neutral duties and obligations. It would appear, therefore, that sufficient emphasis has been laid upon the duties and obligations of neutrals, for these are reasonably clear, as well as the penalties for their violation or evasion. The experiences of the present war have clearly shown, however, that a good deal of work yet remains to be done in the field of defining the rights of neutrals and the obligations of belligerents.

The general obligations of belligerents are well known, and certain acts are definitely forbidden to them; but a serious situation has arisen because there is no way provided to compel belligerents to respect the rights of neutrals or obey the recognized rules of neutrality, except through the agency of the neutral state itself. A powerful state may

---

[8]Convention 5, Respecting the Rights and Duties of Neutrals on Land, Chap. I, Art. 10.

succeed without recourse to force in having its rights respected by the belligerent nations, and in preventing any serious violations of its neutrality. A small state with little or no naval or military forces is at a great disadvantage and may be forced to bear heavy military burdens and many inconveniences in order to preserve its neutrality. It may even have to permit infractions of its waters or territory or suffer desolation and ruin at the hands of an unscrupulous but well-armed belligerent. The whole system is evidently wrong and unjust. The burden is laid upon the weak and those most likely to respect the laws, while the strong and those states who are the most tempted to break over are neither compelled to assume a serious responsibility, nor restrained by adequate penalties.

One of the chief difficulties in securing the proper enforcement of neutrality laws has been the action of belligerent states in interpreting these laws in the light of their own interests or necessities, and expecting neutrals to do the same. On the 2d of August, 1914, Germany demanded of Belgium permission to march her military forces across its territory, offering to pay cash for all necessities used and for all damages.[9] And on August 4th, the Imperial German authorities wrote to the Swiss Government: "The Imperial Government has taken note of that Declaration [of neutrality by Switzerland] with sincere satisfaction, and feels assured that the Confederation, supported by its efficient army and the resolute will of the entire Swiss nation, will resist any violation of its neutrality." It was, therefore, permissible for one belligerent to violate the territory of one neutral, but not for other belligerents to do so. And it was a highly proper and commendable act for one neutral to resist with "the efficient army and the resolute will of the entire nation" any violation of its neutrality, but it was a crime for another neutral similarly threatened to do so. Such inconsistent interpretations of the law of neutrality by powerful belligerents in their own interests render extremely difficult any intelligent enforcement of established laws and place all neutrals in a very difficult and dangerous position. The situation is further complicated by the increasing tendency of belligerents to ignore the rights of neutrals in their endeavors to protect their own interests and promote their own plans and operations. The lengthy correspondence—not yet ended—of the Government of the United States with certain belligerent Powers during all the present war is sufficient proof of this. It has led to a

[9]Belgian Gray Book.

confusion of principles and rendered the enforcement of the laws of neutrality very difficult.

No special guarantees or provisions for the protection of neutrals have been provided in international law, other than the signatures of all governments to the Hague Conventions. It was, therefore, deemed wise to give protection to the smaller neutrals—particularly to those whose geographical position rendered their territory liable to violation in the event of European wars—by special treaties of guarantees. And Switzerland, Belgium,[10] Luxemburg and Norway were protected in this way. But since the now famous "scrap of paper" incident, even treaties of guarantee seem to have lost their importance. The statement that a state may violate at will its international obligations on the ground of national necessity provides no security for neutrals and is in no way admissible in international law. Nor is the lack of a moral code or the failure of a state to provide those municipal laws necessary to make possible the fulfilment of its duties and obligations as a belligerent, when war breaks out, a legitimate excuse for the non-fulfilment of those duties and for the disregard of the laws of neutrality. Self-defense for one state can never justify the destruction of an innocent by-standing neutral state. Neither do the accepted rules of international law or the dictates of justice and humanity permit belligerents to destroy with impunity the lives and properties of neutrals in order to execute some military or naval operation. And it is a strange commentary on the existing system of international law and inter-state relations that, in the present conflict, belligerents have deliberately committed such breaches of the law of nations and of international ethics, while neutral states have been compelled to use all the diplomatic pressure and power at their disposal to procure from those recreant belligerents a tardy recognition that violation of recognized rules may have occurred and a promise of reparation. Moreover, it is manifestly unjust that small neutral states should be forced to pay out $25,000,000 a year (as Switzerland is doing now) to prevent any violation of her frontier, and that their citizens should be deprived of a large portion of their trade and means of livelihood, because two or more of their neighbors are drawn into an armed conflict.

It is, therefore, evident that the existing laws of neutrality are quite inadequate to provide for the conditions and emergencies of the

---

[10]Treaties of June 26, 1831, January 23, 1839, and August 9, 1870.

present time, and that their revision is imperatively demanded. This re-codification should be one of the chief—if not *the* chief—labors of the next Hague Conference, and it must be done with great care so that all the essential principles are clearly stated and will apply with equal precision and force to belligerents and neutrals alike. It is extremely important, in this connection, that some means should be devised whereby the rights and interests of neutral states may be adequately protected, without the whole burden of providing such security and of enforcing the law of neutrality falling upon neutral nations. And the most vital point in any scheme for revision must be the establishment of penalties of such moment and severity as will bring home to all states the consequences of every breach of the rules of neutrality. Penalties for violations by belligerents should be in proportion to the losses and damages imposed upon neutral states by such infractions of the law. And all neutrals should be authorized to demand at once such indemnities and to cut off all diplomatic, and commercial relations if need be, until such time as belligerents make proper restitution or agree to submit them to the Hague Tribunal for adjustment where the amount of the indemnity is open to question.

In municipal law, when any citizen commits a crime, he is arrested and deprived of intercourse with the rest of his fellows until the end of his trial, and, if convicted, for a long or short period according to his sentence. Even when let out on bail, his social position remains for the moment in abeyance; while conviction is sure to deprive him of both citizenship and social standing. Is it, then, too much to ask that, in the family of nations, any state which deliberately commits a crime against its neighbor should be deprived of intercourse with the other members of the family until it has made reparation or been punished for its crime? Only on some such basis will it be possible to make international law effective and to secure protection for the smaller members of the international community. This may be a Utopian view and only possible of achievement when the great standing armies have been abolished and the nations of the world have signed a universal peace agreement. Yet it is a terrible outlook to think that the security, happiness and prosperity of small states should depend solely upon the will or caprice of their greater belligerent neighbors. States may hesitate to put any hindrances or checks upon the exercise of the full sovereignty of any independent state, but the dangers of the undefined position of a neutral state in international law have been

so brought into relief by the present war, that the Powers represented in any future Hague Conference can hardly refuse to lay down carefully rules governing the duties and obligations of both neutrals and belligerents, with adequate penalties for any infractions of the law.

The best world-opinion is hopeful of a general disarmament as a result of the present conflict. At any rate, if the statesmen and diplomats do not favor it, the people of all lands do. If this is accomplished, it will then be possible to hold another Hague Conference and place international law on a sane and workable basis. And it will be possible also to secure some method of enforcement of the rules, now so sadly lacking.

In any event, it should be possible for neutral states through cooperation and intelligent leadership to secure some revision and elaboration of the laws of neutrality that, while preserving the rights and interests of belligerents, will give adequate protection to the territories, properties, persons and rights of neutral states. And no agency will be more effective in bringing about this justly desired situation than the exposure of a belligerent or of a neutral state to international and commercial isolation whenever it violates any law of neutrality or rule of international law.

The PRESIDENT: This concludes the program for the evening, and the Society stands adjourned until 10 o'clock, tomorrow morning.

Thereupon at 10.15 o'clock, p. m., the meeting adjourned.

SECOND SESSION

Joint Session of the Society and the Subsection on International Law of the Second Pan American Scientific Congress

Wednesday, December 29, 1915, 10 o'clock, a.m.

The meeting was called to order by Dr. CHARLES NOBLE GREGORY, a member of the Executive Council of the Society, and Chairman of the Subsection on International Law of the Second Pan American Scientific Congress.

The CHAIRMAN. Ladies and gentlemen: We have the pleasure this morning of listening first to Mr. Walter S. Penfield, of the Bar of the District of Columbia, who will speak on "The attitude of American countries toward international arbitration and the peaceful settlement of international disputes." Mr. Penfield has been an especial student of Latin American history, literature and affairs, and speaks upon this subject with the widest knowledge. I have great pleasure in presenting him:

THE ATTITUDE OF AMERICAN COUNTRIES TOWARD ARBITRATION AND THE PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES

ADDRESS OF WALTER S. PENFIELD,

Of the Bar of the District of Columbia

Few years had elapsed after the discovery of America by Christopher Columbus, before Europe established her colonies, in which her citizens, *conquistadores,* adventurers and missionaries sought the fruits of the virgin soil of the New World.

Three centuries after his arrival, America, conscious of its right to self-government, resolved to obtain its freedom. Under the flag of liberty, which was raised on high from the Delaware River to the southern peaks of the Andes, the people were banded together, anxious to receive their baptism of blood, provided only it made possible the securing of their own nationality. Years of suffering and fighting finally had its recompense, and America, covered with glory and secure in attaining the future which was awaiting it, gave life to a free people.

Finally the flags of the different states floated as emblems of sovereignty, and the dreams of Washington, of Bolivar, of San Martin and of Hidalgo crystallized in the liberty of the Americas.

With the discovery of the New World there was open to civilization a rich and fertile field, with its independence the cause of liberty was advanced, and now by its spirit, by its ideals, by its love for peace and by its asylum from the frightful conflagration which devours Europe, it has in its hands the mission of advancing the cause of arbitration as a medium of preventing and solving international conflicts.

America has accepted arbitration as a juridical principle, has practiced it in numerous cases, has taught it in its lecture halls, and has brought it to the foreground in its chancellories by means of treaties by which arbitration has found favor as a tie of fraternity between peoples and as a provision against the greatest of calamities under which humanity may suffer.

While the present world events appear to prove the inefficacy of arbitration, demonstrating with evident reality that it is an Utopia to endeavor to enchain brutal force before the rules of justice, nevertheless, in the reconstruction which comes after the war, America can perform an important rôle. Without hatred, without passion, without the bitter memory of a cruel campaign, it will be able to labor actively for peace and to insist on the settlement of all international disputes by means of arbitration or other peaceful methods. That such a rôle would not be difficult for her to assume is shown by what she has heretofore accomplished in arbitration and the peaceful settlement of international disputes.

ARBITRATIONS

As early as 1794, the United States, through John Jay, succeeded in having written into the treaty with Great Britain a clause providing, in effect, for the submission to arbitration of differences between the two nations regarding the boundaries and the pecuniary claims of their nationals. In 1795 and again in 1802 the United States and Spain, by conventional agreements, settled by arbitration mutual claims of their nationals. In 1825 Brazil and Portugal likewise agreed to arbitration for the purpose of passing on claims originating during the war. Four years afterwards Brazil thus settled a similar controversy with Great Britain. In 1830 the Argentine and England, in 1839 Mexico and France and Mexico and the United States, and in 1840

the Argentine and France thus solved differences caused by claims brought on account of the war.

After a lapse of 30 years, from 1842 to 1871, when the *Alabama* case occurred, we find 35 questions submitted to arbitration, as much between American nations as between different European Powers and American countries. In this lapse of three decades it is to be noticed that all the American nations, without exception, submitted different questions to arbitration, among which were some of such importance as that arising between the United States and Portugal on account of the destruction of the war-ship *General Armstrong;* between the United States and Great Britain in 1854 over fishing rights; between the United States and New Granada in 1856, by which was settled all the claims of American citizens and companies against New Granada; between Peru and the United States in 1862 relative to the capture of the Anglo-American ships *Lizzie Thompson* and *Georgiana;* between the United States and England in 1863, covering claims of the Hudson Bay Company; between Peru and Great Britain in 1864, entrusted to the decision of the Senate of Hamburg, which decided the claim made by England against Peru on account of the imprisonment suffered by an English subject by the name of White; and between the United States and Brazil in 1870, for the loss of the ship *Canada.*

From 1871 to 1910, or, in the course of 40 years, there was submitted to arbitral decision 125 matters of different kinds from pecuniary claims, which are the most frequent, to maritime controversies, and from rectification of frontiers to fishing zones and sovereignty over territory, covering a variety of juridical questions, involving both public and private law, the parties including all of the American Republics, thirteen of the principal European countries and various countries of minor importance in Asia.

BOUNDARY QUESTIONS

Besides, from the second third of the nineteenth century, with the exception of the arbitral pacts of 1794, 1814 and 1827, between the United States and Great Britain over Canadian frontier questions, it is to be noted that complicated boundary disputes between the American states, which frequently approached near war, began to be settled by means of arbitral decrees. These boundary matters, which have been terminated in large part by arbitration between the United States and Canada, the United States and Mexico, the Argentine and Chile,

the Argentine and Bolivia, Brazil and Colombia, Venezuela and Great Britain, the Argentine and Brazil, Chile and Bolivia, Peru and Bolivia, Mexico and Guatemala, Colombia and Costa Rica, and later Panama and Costa Rica, Ecuador and Colombia, Venezuela and Colombia, Colombia and Peru, and among different Central American republics, although initiated, as has been said, about the middle of the past century, in their majority have been decided in the latter years of the last century and in the beginning of the present.

THE ALABAMA

Among the American arbitration cases there is none of more importance than that of the *Alabama,* tried on account of claims presented by the American Government for damages inflicted to the merchant marine of the United States by the *Alabama* and other Confederate cruisers constructed and armed in ports of Great Britain.

The intrinsic importance of the controversy, the passion with which it had been considered, the consequence which it bore with reference to a doctrine of such importance as that of international neutrality, and the manner in which a country of the power of Great Britain accepted the award rendered against her, gave a sudden and formidable prestige to the cause of arbitration and encouraged the belief that arbitration would be able to take the place of war.

In his work on *Arbitration and The Hague Court,* General John W. Foster, formerly Secretary of State of the United States, in speaking of the *Alabama* case, says:

> The nineteenth century was more fruitful than any similar era in the submission to the adjudication of special arbitration tribunals of the differences of nations insolvable by diplomatic methods. The most notable of these, and that which exerted the greatest influence upon the nations, was the arbitration of the bitter controversy between Great Britain and the United States, growing out of the American Civil War and the irritating questions existing with Canada, which were peacefully settled by the Treaty of Washington of 1871. Of this the British statesman and writer, John Morley, says:
>
> > The Treaty of Washington and the Geneva Arbitration stand out as the most notable victory in the nineteenth century of the noble art of preventive diplomacy and the most signal exhibition in their history of self-command in two of the three chief democratic Powers of the Western World.

INTERNATIONAL PACTS

From the date of their independence to the present time, the countries of this hemisphere have entered into treaties providing for arbitration. On October 3, 1823, shortly after its independence, Mexico celebrated with Colombia a treaty of friendship, union, league and confederation with the intention of creating a general congress of the American states, composed of plenipotentiaries for the purpose of cementing their relations and of constituting themselves as an arbitral judge and conciliator in their disputes and differences. Three years afterwards, it signed pacts of a similar nature with Central America, Peru, and again with Colombia.

In 1822 Colombia celebrated similar pacts with Peru and Chile, and in 1825 with Central America. And it signed arbitration treaties with the United States in 1824 and 1846; with Ecuador in 1832 and 1856; with Peru in 1829, 1858 and 1870; and with Venezuela in 1842.

By the Treaty of Guadalupe Hidalgo of 1848 an end was put to the war which existed between Mexico and the United States. It is truly notable that in the same treaty which terminated the conflict, Mexico accepted the principle of arbitration, the agreement being that both governments would endeavor to settle any differences which might arise, using for this end mutual representations and pacific negotiations. And the treaty further provided that if by these methods they should not succeed in agreeing, there would not be any resort to hostility until the government of that one which believed itself aggrieved may have considered maturely whether it would not be better that the difference be settled by an arbitration or commissioners named by both parties or by a friendly nation.

In the ten years which followed the celebration of the first conference of peace at The Hague, from 1899 to 1909, there were signed 40 general treaties of arbitration, in which 16 republics of the new continent figured as parties. Brazil signed in three years, from 1908 to 1911, 29 treaties, in which this recourse was agreed to. Last year Uruguay signed with Italy the most liberal treaty of this kind that exists until now between an American Republic and a European country.

THE "A. B. C." TREATY OF MAY 25, 1915

The most recent treaty is the one signed on May 25, 1915, by the Argentine, Brazil and Chile, which brings together the union known

popularly as the "A. B. C." In the first article it is provided, "Controversies which, originating from whatever question, between the three contracting parties, or between two of them, and which may not be able to be decided by the diplomatic channel, nor submitted to arbitration in accordance with existing treaties or with those which later on may be made, will be submitted to the investigation or report of a permanent commission constituted in the manner which Article 3 provides." The high contracting parties agree not to engage in hostile acts until after the report of the commission, which the treaty provides for, has been produced or until the term of a year, to which Article 5 refers, has passed.

From a study of the treaty it may be clearly seen:

(1) That the permanent commission is a tribunal to which the contracting countries are to have recourse to solve whatever difficulty may arise between them.

(2) That this tribunal is charged with preparing a report within a certain time, and does not have authority to pronounce a decree in the controversy.

(3) That, nevertheless, it is evident that the fact that the commission makes a report will cause it to be prepared according to juridical standards on whatever matter may be submitted, although it may be of a political kind or affecting the national honor of any of the contracting parties. And, finally

(4) That such permanent commission would appear to be an experiment on the success of which will depend the creation of a true tribunal of American arbitration.

CONSTITUTIONS

Some of the countries of America have referred to arbitration in their constitutions. For example, Ecuador in its Constitution of March 31, 1878, recommended arbitration as a means of avoiding war. The Dominican Republic in its Constitution of May 20, 1880; Brazil in its Constitution of February 24, 1891; and Venezuela in its Constitution of June 21, 1893, prescribed this principle as a method which ought to be employed before appealing to any violent solution.

AMERICAN CONGRESSES

It is interesting to examine the records of American congresses to learn their attitude on the subject under discussion.

As early as the first Panama Congress of 1826, a pact of "Union, alliance and perpetual confederation" was signed by the states represented, declaring that "The contracting parties solemnly obligate and bind themselves to amicably compromise between themselves all differences now existing or which may arise in the future." This, however, was not ratified.

In 1831, 1838 and 1840, Mexico unsuccessfully tried to arrange for another congress. Finally one convened at Lima in 1847, at which a treaty was signed, providing, among other things, for a congress of plenipotentiaries, which was to meet periodically, and for the settlement of disputes in a friendly manner and by arbitration. It further provided that, if the arbitration should be rejected, then the congress of plenipotentiaries, after examining the grounds upon which each of the republics based its contention, would give such decision as seemed most just.

In 1864 another congress met at Lima, which adopted a treaty on the preservation of peace, and provided for mediation and arbitration.

In 1880 the representatives of several countries, at a meeting in Bogota, signed a convention for general and absolute arbitration. Provision was made for the designation of an arbitrator in each case by special convention, in default of which the President of the United States would be the arbitrator. It also provided that all other countries should be urged to enter into similar treaties "in order that the solution of every international conflict by means of arbitration may come to be a principle of American public law."

In the celebration of the hundredth anniversary of the birth of Bolivar, Venezuela invited the American nations to meet in a congress at Caracas in 1883, and the representatives there assembled formally declared themselves in favor of arbitration as the only solution for all controversies between states.

In 1886 a resolution was moved by William McKinley in the House of Representatives of the United States, favoring the creation of international courts of arbitration for America. A similar resolution was moved in the upper house by Senator Logan.

From 1881 until 1888 Mr. Blaine had urged the calling of a general conference of American nations to meet in Washington. By the Act of May 24, 1888, the Congress of the United States authorized the President to invite the Governments of Mexico, Central and South America, Haiti and the Dominican Republic to hold a conference in

conjunction with the United States, with the object, among other things, of discussing and recommending to the respective governments a plan of arbitration for the solution of conflicts that might arise between them.

An invitation was extended and the conference met during the latter part of 1889 and the beginning of 1890. In the latter year, the Congress of the United States adopted a resolution reciting "that the President be requested to invite from time to time, as fit occasion arises, negotiations with any government with which the United States has or may have diplomatic relations to the end that any differences or disputes arising between the two governments, which can not be adjusted by diplomatic agency, may be referred to arbitration, and be peaceably adjusted by such means."

This First Pan American Conference presented a project for a general treaty of arbitration, declaring that the republics of America adopt arbitration "as a solution of difficulties, disputes or contests between two or more of them." While this draft of a treaty was not then ratified, it showed the acceptance by America of the principle of peaceable settlements, which later was adopted in the general arbitration convention in the Fourth Conference at Buenos Aires in 1910, as the American system of settlement of international controversies.

The Second Pan American Conference of 1901, which met in Mexico, included in its program "arbitration," and an "International Court of Claims." The conventions comprised, among other things, the submission to arbitration of all pecuniary claims and obligatory arbitration in all questions not affecting the honor and independence of nations. It was previously stipulated that independence and national honor would not be considered at stake in all controversies relating to diplomatic privileges, boundaries, rights of navigation, and validity, interpretation and observation of treaties.

At the third meeting of the Pan American Conference at Rio de Janeiro in 1906 it was recommended to the American Governments "that they give instructions to their delegates to the Second Conference at The Hague to try in that meeting to celebrate a general convention of arbitration, so efficacious and definite as to merit the approval of the civilized world, which may be accepted and put in force by all nations."

At the Fourth Pan American Conference held in Buenos Aires in 1910 the agreement to submit pecuniary claims to obligatory arbitra-

tion was again renewed, but the question of arbitration was eliminated from the conference.

THE HAGUE CONFERENCE

At the first conference held at The Hague, the only American countries represented were Mexico and the United States. As is well-known their representatives joined in signing the Convention for the Pacific Settlement of International Disputes. This contained provisions providing for the maintenance of general peace, good offices and mediation, and international commissions of inquiry. It also provided for international arbitration recognizing that in questions of a judicial character, and especially in those regarding the interpretation or application of international treaties or conventions, arbitration is the most efficacious and equitable method of deciding controversies which have not been settled by diplomatic methods.

The Second Pan American Conference signed a protocol by which the countries adhered to the treaties signed at The Hague in 1899, recognizing them as a part of public American international law, and at the same time requesting the United States and Mexico to secure the admission of the non-signatory American states to the benefits of the Convention for the Pacific Settlement of International Disputes.

In October, 1904, when Mr. Hay took the initiative on behalf of the United States in calling a Second Conference at The Hague, he suggested in his letter to the signatory Powers the consideration and adoption of a procedure by which states non-signatory to the original acts of The Hague Conference might become adhering parties. A year later, the President of the United States yielded to Russia the initiative in calling a second Hague conference, and Russia included the American states in the call for the conference. At the meeting of 1907, there was signed a Convention for the Pacific Settlement of International Disputes, which contained provisions similar in nature to those adopted at the first conference in 1899. As signatory parties to this convention appear the names of all but two of the American countries.

AMERICAN ARBITRATIONS AT THE HAGUE

The first countries which availed themselves of the opportunity of using the machinery of The Hague for the settlement of an international controversy, were the United States and Mexico. They were willing to try the experiment.

It was on May 22 1902, that the Mexican Ambassador in Washington, M. de Azpiroz, and John Hay, the Secretary of State, signed the protocol referring to The Hague for decision the case known as the "Pious Fund of the Californias." An award was rendered on October 14, 1902, requiring the Government of the Republic of Mexico to pay the Government of the United States of America the sum of $1,420,682.67, Mexican, within eight months from the date in accordance with the requirement of Article 10 of the protocol. The award is probably unique in the hisotry of arbitral decisions in that it also requires the Republic of Mexico to pay the Government of the United States of America on February 2d of 1903, and each following year on the same date, perpetually, an annuity of $43,050.99. Credit is due to Mexico in unhesitatingly accepting the award of the tribunal and in promptly complying with the terms of the decision.

Thus the honor of starting the machinery of The Hague Court belongs to two American countries. And it may not be an improper deduction to say that if they had not been willing to submit their question to the tribunal for decision, The Hague Court might have until today remained a dream, impractical because of never having been used.

A year afterwards in 1903 the offices of The Hague Court were again invoked in the settlement of what is known as the Venezuelan Preferential Treatment Case. As parties to this arbitration we find on one side three European countries, Germany, Great Britain and Italy, and on the other side five European countries, Belgium, Spain, France, the Netherlands, and Sweden and Norway, and three American countries, Mexico, the United States and Venezuela. The award which was rendered on February 22, 1904, has been faithfully carried out.

On January 27, 1909, a protocol was signed between the United States and Great Britain for submission to The Hague of the case known as the North Atlantic Coast Fisheries, in which an award was rendered on September 7, 1910. On February 13, 1909, the United States and Venezuela signed a protocol for the arbitration of what was known as the "Orinoco Steamship Company" case, in which an award was rendered on October 25, 1910. On April 25, 1910, a protocol was signed between Italy and Peru for decision at The Hague of the Canevaro claim, in which an award was rendered on May 3, 1912.

To date fifteen cases have been arbitrated at The Hague. As parties to the protocols appear the names of fifteen different countries. Four of these are Americans, namely Peru, Mexico, United States and Venezuela. Of the fifteen cases arbitrated, two of them were between American countries and three between American and European countries. It can thus be seen that the records of The Hague Tribunal show that the attitude of the American states is to settle their differences by means of international arbitration, or other peaceful methods.

THE CENTRAL AMERICAN COURT OF JUSTICE

While the project of establishing a permanent court of arbitral justice at The Hague was not successful, the plan has been realized by the countries of Central America, which signed a convention in Washington in 1907, creating the Central American Court of Justice.

It is to be noted that the jurisdiction of this court is very broad, since, according to Article 1 of the treaty, it is provided that the high contracting parties are obliged "to submit all controversies or questions which may arise among them, of whatever nature and no matter what their origin may be * * *."

Additional jurisdiction was also granted:

> (a) In questions which individuals of one Central American country may raise against any of the other contracting governments, because of the violation of treaties or conventions, and other cases of an international character, no matter whether their own government supports said claim or not; provided that the remedies which the laws of the respective country furnish against such violation shall have been exhausted or that a denial of justice shall have been shown.
>
> (b) In cases which by common accord the contracting governments may submit to it, no matter whether they arise between two or more of them or between one of said governments and individuals.
>
> (c) In international questions which by special agreement any one of the Central American Governments and a foreign government may have determined to submit to it.

This convention is probably one of the broadest and most liberal that has yet been entered into between a number of countries. It grants jurisdiction to the court over all controversies of whatsoever nature, and it does not except matters affecting the national independence or honor.

The court was inaugurated on the 25th day of May, 1908, in Cartago, Costa Rica, and during the seven years which it has been in existence it has passed on six cases, one of which was the litigation brought by Honduras against Salvador and Guatemala, in which the plaintiff attributed a certain responsibility to the defendants for supposed protection afforded to a seditious movement.

It can, therefore, be said that the tribunal of Central America performs a mission in preserving peace and settling difficulties. The broad jurisdiction granted to the court and the decisions rendered clearly show the friendly attitude of the Central American countries toward international arbitration and the peaceful settlement of international disputes.

THE A. B. C. MEDIATION

One of the most notable acts, showing the desire of the American countries to settle international disputes by amicable means, was the "A. B. C." mediation during 1914 in the difficulties which had arisen between Mexico and the United States. After a session lasting 46 days, a protocol was signed by which it was agreed, among other things, that the provisional government to be constituted in Mexico would be immediately recognized by the Government of the United States, renewing consequently the diplomatic relations between both countries, and that immediately thereafter it would arrange for the establishment of international commissions for the settlement of claims of foreigners, presented on account of damages caused during the period of the civil war as the consequence of military acts of national authorities.

These were some of the differences whose solutions were arranged by the mediating governments. That which remained to the Mexicans was the liberty of electing the *de facto* government which the American Government would have to recognize. Although such an agreement was never carried out on account of the military triumph of one party over the other, that fact does not prevent the Niagara Conference from having been successful in preventing possible war between the two countries.

RESTRICTIONS IN ARBITRATION TREATIES

The usual restrictions contained in arbitration treaties twenty years ago were vital interests, national honor, sovereignty and independence. Argentina made its special formula, according to which any question

whatsoever is submitted to arbitration, excepting those which effect the constitutional precepts of both contracting countries, although it abandoned the favorite formula in the treaty which it celebrated in 1911, with England, under which it submitted to arbitration all differences "which have not been able to be arranged by the diplomatic channel."

Argentina, Mexico and the five states of Central America are bound by unreserved treaties to submit to the Permanent Court at The Hague "all differences of whatever nature which may arise between them and which it is not possible to settle diplomatically."

In February, 1908, the United States and France signed a convention agreeing to submit to arbitration all questions of a legal nature or relating to the interpretation of treaties, "provided, that they do not affect the vital interests, the independence, or the honor of the two contracting states, and do not concern the interests of third parties." Similar treaties have been entered into by the United States with over twenty foreign countries.

In the treaty of compulsory arbitration entered into by Mexico and Spain in 1902, "national independence and honor" were excepted. Article II of the treaty enumerates the cases in which neither the national independence nor honor would be considered to be compromised.

In the treaty entered into between Spain and Guatemala in February, 1902, Article I provided that

> The high contracting parties agree to submit to arbitration all controversies which may arise between them during the existence of the present treaty, and for which they may not have been able to obtain a friendly settlement by direct negotiations, provided that, in the judgment of both nations, said controversies do not affect the national independence or honor.

Article 2 states the cases in which neither the national independence nor honor will be considered as compromised.

It can thus be seen that these last two treaties, which expressly confer jurisdiction over all controversies, except those affecting independence and honor, go further than the treaties of the United States in that they expressly state what can not be considered as questions of national independence and honor, and thus expressly confer jurisdiction in a class of cases which are expressly excepted from those which might be claimed to affect the national independence and honor.

The treaty signed between Spain and Colombia in February, 1902, provided for submitting to arbitration all questions of whatever nature that might arise between them, so long as they do not affect the precepts of the constitution of either party. Article 2 provides that questions which have been settled can not be reopened, but, in case they are, the arbitration will be limited exclusively to questions which may arise over the validity, interpretation and fulfillment of said settlements. Thus this treaty in one line expressly grants jurisdiction for all questions of whatever nature, and in the other expressly reserves questions affecting the precepts of the constitution of either party and those matters already settled.

Many eminent internationalists, especially in later years, have vigorously attacked such restrictions. Writers differ concerning the meaning which is attributed to the words "national honor." The Committee on Foreign Affairs of the Congress of Uruguay, in discussing the general obligatory arbitration convention of 1914 between Uruguay and Italy stated, "Arbitration, as a juridical solution, demands precision, clarity and sincerity; because precision is honesty of language, and the words honor, vital interests, etc., have a dangerous vagueness and the colorless fogginess of a common-place."

As much in theory as in practice, the restrictions to arbitration gradually are disappearing, and there is every indication that in the not far distant future the doctrine of arbitration without restrictions, which today finds supporters in the nations of the new continent, will be adopted by all the republics of America.

CONCLUSION

The attitude of the American countries toward arbitration and the peaceful settlement of international disputes can be easily determined from the summary which has been made of the arbitrations to which they have been parties, of the treaties which they have signed, and of the action of the congresses at which they have been represented.

But we can not conclude without suggesting in what manner the American republics may still further advance the cause of arbitration and the peaceful settlement of international disputes. To our mind there are three methods in which it may be done:

(a) The arbitration treaties should be broader.

(b) The adoption of a code of public and private international law.

(c) The creation of a Pan American Court of Arbitration, to be

located at the City of Panama, where it will be equally accessible to all the American countries and where it will sit in an atmosphere in which there is a blending of the Latin and Anglo-Saxon ideals of justice and equity.

Thus we may make arbitration and the peaceful settlement of international disputes a principle of American politics, which will be subscribed to by all the chancellories, and which will be guided by American public international law. By so doing we shall be able to have a court which is permanent and ready to sit and assume jurisdiction over such matters as are brought before it, and which, instead of bearing the name of a modest capital beyond the seas, will be known as the Permanent Pan American Court of International Arbitration.

The CHAIRMAN. The discussion of the topic before us will be continued by Mr. Jackson H. Ralston, of the Bar of the District of Columbia. Mr. Ralston has been identified with arbitrations, especially involving American states, and he has won the highest distinction by his conduct in those affairs. I have great pleasure in presenting him.

THE ATTITUDE OF AMERICAN COUNTRIES TOWARD INTERNATIONAL ARBITRATION AND THE PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES

ADDRESS OF JACKSON H. RALSTON,

Of the Bar of Maryland and of the District of Columbia

Under severe limitations as to the time limit of my address and limited in opportunities for its preparation, because of the lateness of the time when the request reached me and pressure of business engagements, I am compelled to submit to you only a sketchy commentary upon the arbitrations in which the Americas have taken part.

From the organization of their respective governments, the nations of this hemisphere have shown more than a perfunctory devotion to the cause of international arbitration. As a result, in place of the scattering and imperfectly developed arbitrations marking the periods preceding the Jay Treaty of 1794, the Americas have contributed largely to the working out of a judicial system of arbitration, increasingly logical in its arrangements.

As illustrative of the growth of arbitration south of us, we may

refer to the number of arbitral treaties in which the nations so placed have taken part. For instance, the Argentine Republic in 12, Bolivia 15, Brazil 23, Chile 35, Colombia 22, Costa Rica 10, Dominica 5, Ecuador 12, Guatemala 9, Haiti 10, Honduras 8, Mexico 15, Nicaragua 11, Panama 3, Paraguay 3, Peru 39, Salvador 5, Uruguay 1, Venezuela 23.

WHY THE ARBITRAL PRINCIPLE IS STRONG AMONG THE AMERICAS

It is a fair preliminary inquiry why arbitration has received among the Americas an extension never accorded it in Europe. It may be suggested that as to boundary questions, the disputes have related to imaginary lines distant from the centers of population, while those in charge of national affairs were perhaps but slightly concerned about the fate of stretches of country from which they did not hope to gain revenue or profit. Little, therefore, was lost in agreeing to arbitrate such questions. Nevertheless, as to this subject-matter of arbitration the greatest difficulties have offered themselves, and there has been a disposition to criticise the results of the arbitral inquiry. This was illustrated in the case of the United States by the disputes which arose over our Northeastern boundary line, and has been more recently shown in the conduct of several South American countries. We must, therefore, look elsewhere for a satisfactory explanation.

LACK OF DISTINCTIVE FOREIGN POLICY

I am disposed to believe that an important reason for our peculiar extension of arbitration has been the lack on the part of the several American nations of a distinctive foreign policy. Foreign policies are made up, roughly, of fear and avarice, sometimes strongly scented with altruism, but on analysis this largely proves, generally speaking, negligible. Happy is the nation whose only foreign policy is to treat honorably all associates in the family of nations. The American nations have not found it necessary to study how to gain political advantages at the expense of others, or to hold assumed advantages through doubtful means. They have had no past to live down, no revenges to satisfy, no international outrages to justify. It has therefore been possible for them to meet one another upon a common basis, recognizing between themselves, as among gentlemen, the obligations of courtesy, forbearance and justice. So they have acknowledged that,

with the best intentions upon their several parts, offense was possible, and have with little hesitancy agreed that any complaint of wrong-doing should be determined by an impartial tribunal.

These nations have considered themselves sovereign in the usual international sense, that is within the radius of their own national action. They have not accepted the old European idea of sovereignty involved in the phrase that the king could do no wrong, or typified by the idea that he was anointed mystically from on high. Their dignity therefore in their mutual intercourse has been that which pertains to self-respecting peoples, and not one assumed because of mysterious divine appointment. It has thus been easier for them to acknowledge the possibility of error than it could be for one assuming immediate personal relations with the Almighty.

The wonder is not, then, that the Americas have forwarded the cause of international arbitration, but when we examine into it, it would be rather that more has not been accomplished in this direction.

MATTERS COMMONLY RESERVED FROM ARBITRATION

When examining the North and South American arbitral treaties, we are struck with the constant reservation from arbitration of questions which are considered to involve the vital interests, independence or honor of the contracting states, and, as it is sometimes said, which affect third Powers. The effect of this reservation is to render valueless the treaty containing it, except so far as, feeling themselves under some moral obligation, or for reasons of policy, the parties involved choose to give it efficacy. In other words, the disposition towards peace existing, exactly the same end could be accomplished without a treaty of arbitration as with it.

We say this because there is no question imaginable which may not be declared by one nation or the other to involve its honor, its independence, or its vital interests. To illustrate: the nation which is subjected to a charge of denial of justice, may well declare, if it see fit, that such a suggestion constitutes a reflection upon its honor, and that the question of its existence is not a fit subject for arbitration. The nation whose territorial limits are alleged by another nation to be in doubt, may decline to arbitrate because such a proceeding would affect its independence or its vital interests.

The chief value, therefore, of such arbitral treaties, as we now refer to (and they constitute the most numerous ones) is a moral one, for

their existence tends to shift the ground of discussion from the naked question as to whether arbitration should or should not exist to that of a consideration as to whether the clauses of exception have any particular force, and therefore whether arbitration is obligatory. This situation seems to have been recognized and a definite way of relief provided in but one treaty so far as I can discover, this, however, not being a treaty signed by an American nation. The treaty between Italy and Sweden of April 13, 1911, after making the usual exception with regard to independence, integrity and vital interests (honor not being recognized as a ground of exception) provides that each party shall itself judge whether the difference affects its independence or integrity, but that if the question be raised as to whether the vital interests of one of the states are involved, and this becomes a subject of dispute, then this point of itself may be submitted to arbitration.

A form used many times, particularly in arbitration treaties between Spain and the Latin-American Republics, is more satisfactory with regard to exceptions in that it provides absolutely for the submission to arbitration of all controversies of whatever nature that for any cause may arise in so far as they do not affect the precepts of the constitution of either of the contracting states, and may not be resolvable by means of direct negotiations. While the language "precepts of the Constitution" may not be as definite and clear as one could wish, nevertheless, it certainly does not include the larger part of the exceptions of honor and vital interests. We may, therefore, regard this particular form of arbitration as marking a distinct advance.

The greatest arbitral precedent of recent history and one which we may hope will be followed in the future, as in effect we shall see it has been by Central America, is that offered by the treaty between Italy and the Argentine, dated July 23, 1898, by virtue of which the high contracting parties obligated themselves to submit to arbitral judgment all controversies between them of whatever nature and relating to any difficulty that could arise during the duration of the treaty, and for which they had been unable to obtain an amicable solution by direct negotiations. We are compelled to note, however, that Italy and the Argentine by the later treaty of December, 1907, apparently limited their former treaty by excepting, as has been done by a number of other countries above noted, difficulties relating to the constitutional provisions in effect in one or the other state, but pro-

viding absolutely for juridical arbitration of all differences as to the application of conventions concluded or to be concluded between the contracting states, or which relate to the interpretation or application of a principle of international law.

The arbitral treaties in which the Americas have been concerned have included almost every conceivable subject-matter, internationally speaking, many of which, had the nations been so inclined, would have afforded a basis for war quite as valid as have ever come under the headings of honor, independence or vital interests. There have been arbitrated, for instance, numberless boundary questions, claims for seizure of vessels, wrongful occupation of property, military acts, breaking of concessions and other contracts, disagreements involving interpretations of treaties, determination of the rights of nations under certain conditions to exercise control over the high seas, fisheries disputes, denial of justice, maritime captures, rights of neutrals, and an infinite variety of other subjects.

FORM AMERICAN ARBITRATIONS HAVE TAKEN

The form which American arbitrations have taken has been various. In the beginning, we have seen umpires chosen by lot, each of the contending parties nominating one of its own citizens or subjects. Later has come the naming of a foreign court or executive as the umpire, or the bestowal upon a foreign indifferent sovereign of the right to name the umpire. Again the judges suggested by either party on coming together have had the right to choose another as their presiding officer.

In some instances, as in boundary disputes, the commissioners, after determining the underlying principles, have left to subordinate technical commissions the formal duty of establishing boundary points. In one instance, that of the Alaska boundary, we find an extraordinary tribunal created, consisting of an equal number of representatives of the contending nations, who determined by a majority vote where justice lay.

ADHESIONS TO THE HAGUE CONVENTIONS

In other different ways the North and South American nations have expressed their adhesion to the policy of arbitration. The first Hague Convention was signed by the United States and Mexico; the second by these countries and the Argentine, Bolivia, Brazil, Chile, Colombia, Ecuador, Guatemala, Haiti, Nicaragua, Panama, Peru, Salvador, Uru-

guay and Venezuela. The first case to be sent to the Hague Permanent Court of Arbitration was that of the Pious Fund between the United States and Mexico, followed shortly by the Venezuelan Preferential case, and later by others affecting South and North American countries. To the United States and Mexico belong the unique honor of opening the Hague Court, and their example as we see has met with repeated American approval.

CENTRAL AMERICAN COURT OF JUSTICE

The repeated differences between Central American countries led to a Central American Peace Congress held in Washington, in November and December of 1907, the result of which was the signing of a convention providing for the establishment of a Central American Court of Justice. To this convention Costa Rica, Guatemala, Honduras, Nicaragua, and Salvador adhered. By its provisions the Central American Republics were bound to submit all controversies or questions which might arise among them, of whatsoever nature and no matter what their origin, in case the respective Departments of Foreign Affairs should not have been able to reach an understanding.

The court was also authorized to take cognizance "of the questions which individuals of one Central American country may raise against any of the other contracting governments, because of the violation of treaties or conventions, and other cases of an international character; no matter whether their own government supports said claim or not; and provided that the remedies which the laws of the respective country provide against such violation shall have been exhausted or that denial of justice shall have been shown." It also gives jurisdiction over cases "arising between any of the governments and individuals, when by common accord they are submitted to it," and to take cognizance "of any international question which by special agreement any one of the Central American Governments and a foreign government may have determined to submit to it." Under this treaty a Central American Court of Justice was appointed, and a number of cases have been submitted and determined.

UNACCEPTED UNITED STATES ARBITRAL TREATIES WITH FRANCE AND ENGLAND

Certain arbitral propositions of a distinct character have been entered into to which the United States was a party and which deserve atten-

tion. In 1911, treaties identical in purpose were prepared between the United States, on the one hand, and France and Great Britain on the other, which failed to go into effect by reason of the fact that because of amendments made by the Senate they did not receive Presidential sanction. By the terms of these treaties differences not possible of adjustment by diplomacy "relating to international matters in which the high contracting parties are concerned by virtue of a claim of right made by one against the other under treaty or otherwise, and which are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity, shall be submitted to the Permanent Court of Arbitration established at the Hague by the Convention of October 18, 1907, or to some other arbitral tribunal as may be decided in each case by special agreement, which special agreement shall provide for the organization of such tribunal, if necessary, define the scope of the powers of the arbitrators, the question or questions at issue, and settle the terms of reference and the procedure thereunder."

The treaty further provided for the institution of a "Joint High Commission of Inquiry to which, upon the request of either party, shall be referred for impartial and conscientious investigation any controversy between the parties within the scope of Article I, before such controversy has been submitted to arbitration, and also any other controversy hereafter arising between them even if they are not agreed that it falls within the scope of Article I; provided, however, that such reference may be postponed until the expiration of one year after the date of the formal request therefor, in order to afford an opportunity for diplomatic discussion and adjustment of the questions in controversy, if either party desires such postponement."

The Senate struck out the following proviso:

> It is further agreed, however, that in cases in which the parties disagree as to whether or not a difference is subject to arbitration under Article I of this treaty, that question shall be submitted to the Joint High Commission of Inquiry; and if all or all but one of the members of the commission agree and report that such difference is within the scope of Article I, it shall be referred to arbitration in accordance with the provisions of this treaty.

The effect of striking out this proviso was, of course, to leave it to each of the contracting parties to determine whether a dispute was in its nature justiciable, and thus deprived the treaty of a large part

of its operative value. It is to be added that the Senate at the same time in connection with each treaty and as interpretive of it, added the following proviso:

> *Provided,* That the Senate advises and consents to the ratification of the said treaty with the understanding to be made part of such ratification that the treaty does not authorize the submission to arbitration of any question which affects the admission of aliens into the United States, or the admission of aliens to the educational institutions of the several States, or the territorial integrity of the several States, or the United States, or concerning the question of the alleged indebtedness or moneyed obligation of any State of the United States, or any question which depends upon or involves the maintenance of the traditional attitude of the United States concerning American questions, commonly described as the Monroe Doctrine, or other purely governmental policy.

RECENT PEACE TREATIES

Confirmatory of the general attitude of the Americas as to the peaceful solution of international difficulties is their conduct with regard to the Bryan Peace Treaties, as they are called. These treaties embodied an idea first elaborated by the recent Secretary of State, which idea received the emphatic endorsement of the President of the United States, and, under his direction, Mr. Bryan put it into effect. While some thirty treaties have already been signed, among the signatories being practically all of the nations south of us, actual exchanges have only taken place between the United States and sixteen other nations, among others being Bolivia, Costa Rica, Guatemala, Paraguay and Uruguay. These treaties constitute the last and greatest evidence that among the Americas the preservation of peace by every means humanly possible and the doing of justice as if between man and man are the paramount duties resting upon statesmen. They point the road directly toward arbitration and will accustom the minds of men more and more to think in terms of peace rather than in terms of war.

The CHAIRMAN. We now turn to another topic, namely, "What means should be provided and procedure adopted for authoritatively determining whether the Hague Conventions or other general international agreements, or the rules of international law, have been violated? In case of violations, what should be the nature of the remedy and how should it be enforced?"—a great and burning question at the

present time. I have the honor, first, to call upon Dr. Theodore S. Woolsey, formerly Professor of International Law in Yale University. Mr. Woolsey bears a name distinguished on both sides of the ocean in international law, and he has continued that distinction with undiminished lustre. I have great pleasure in presenting him.

RETALIATION AND PUNISHMENT

ADDRESS OF THEODORE S. WOOLSEY,
Formerly Professor of International Law in Yale University

Two years ago I could have said in this place without fear of contradiction that since the Napoleonic era, international law has mightily advanced in at least two particulars, the humanization of war and the rights of neutrals. Can one honestly say this today? We students of that law, watching with absorbed interest the events of the past seventeen months, are substantially agreed, I think, that the two great protagonists of land warfare and of naval war, Germany and Britain, under the plea of military necessity have violated practically every law which stood in their way. Neutral rights are no longer regarded. Undefended towns are bombarded from the air and from the sea. Destruction of private property as a war measure has been carried to an unexampled length. The non-combatant has been cruelly abused. Murder by submarine has become a commonplace. War has been carried into neutral territory. The world is full of plotting and espionage, of explosion and arson, of duplicity and treachery, of suffering and death. And civilization, which means the reign of law, sinks below this bloody horizon. Is it strange that we should be told that international law exists no longer?

A law unenforced does not survive. A criminal statute whose violation is never punished, is worse than none. But when penalty follows violation, that law, no matter how often broken, is triumphant. So is it with the law of nations. If those who have broken its rules are not called to account; if the government which offends can not be held responsible, then truly our law has broken down. If on the contrary, somehow sooner or later, breaches of the law shall be punished and governments can be made responsible for wrong-doing, then the law is vindicated.

A brief study, therefore, of the punishment of those offenses against the rules of war, which are commonly called war crimes, means more

than the natural wish that illegalities or barbarities should be punished and thus checked. It involves the more fundamental belief that if, in spite of grave difficulties, trial and punishment can be judicially applied to such infractions of the laws of war, international law will be justified and civilization preserved.

At the outset I ask two concessions. First, that without argument, I may disregard the German theory that *Krieg's raison geht vor Krieg's recht, i. e.,* that military necessity, which is really military convenience, is paramount to law. It is to be remarked, in this connection, that if a stipulation agreed to and ratified by a state is held binding by that state only so long as seems convenient, then future stipulations by that state will not be credited without a guaranty. And second, I reject the theory, too often advanced today, that neutral rights can be lawfully qualified by the need of reprisals or of self-defense as between belligerents. Law is law and meant to be obeyed.

If disobeyed, how can it be enforced? There are two ways. If your enemy does certain things to you, you may do the same to him to prevent a repetition; or if he does certain wrongful acts, you may punish the wrong-doer. The two ways, then, are retaliation and punishment.

The rules authorizing retaliation for violation of the laws of war are vague and ill-defined, nevertheless operative. Lieber, in his codification of the law governing land warfare, issued to the Northern Army in 1863, states the principle thus:

> §27. The law of war can no more wholly dispense with retaliation than can the law of nations, of which it is a branch, yet civilized nations acknowledge retaliation as the sternest feature of war. A reckless enemy often leaves to his opponent no other means of securing himself against the repetition of barbarous outrage.
>
> §28. Retaliation will therefore never be resorted to as a measure of mere revenge, but only as a means of protective retribution, and moreover cautiously and unavoidably; that is to say, retaliation shall only be resorted to after careful inquiry into the real occurrence, and the character of the misdeeds that may demand retribution.
>
> Unjust or inconsiderate retaliation removes the belligerents farther and farther from the mitigating rules of regular war, and by rapid steps leads them nearer to the internecine wars of savages.

What did Lieber mean by "protective retribution"? Perhaps his §62 will help to make this clear.

> All troops of the enemy known or discovered to give no quarter in general, or to any portion of the army, receive none.

Yet at the capture of Fort Pillow in 1864, although according to Rhodes some of the black troops were refused quarter and shot after surrender, there was no retaliation. Lincoln, however, threatened retaliation upon Confederate prisoners if the South put a law into effect refusing quarter to negro troops and their white officers. Although the original wrongdoer is the one to whom retaliation will naturally be applied, it need not be limited to him. Lieber §59:

> A prisoner of war remains answerable for his crimes committed against the captor's army or people, committed before he was captured, and for which he has not been punished by his own authorities. All prisoners of war are liable to the infliction of retaliatory measures.

These rules, drawn up by the distinguished German–American publicist, are thus fully given, because upon his code subsequent codes were based, but, alas, neither the Brussels nor Hague rules for land warfare treat of retaliation at all. The Russian draft, in 1874, had proposed, as quoted by Oppenheim: (1) that reprisals should be admitted only in extreme cases of absolutely certain violations of the rules of legitimate warfare; (2) that the acts performed by way of reprisals must not be excessive but in proportion to the respective violations; (3) that reprisals should be ordered by commanders-in-chief only; but the subject was dropped. Presumably it was too difficult, too delicate a matter to be discussed with any hope of agreement.

The Oxford Code, adopted by the Institute of International Law in 1880, embodies these rules, adding that reprisals are prohibited if reparation is made, and that they must respect the laws of humanity and morality. This code, as you know, is an academic performance only, and its treatment of retaliation is vague. Nor have the text writers, as individuals, been much more explicit. Some follow Lieber textually, others add each some significant thought, others still are silent, which leads Oppenheim in 1906 to say: "Writers on the law of nations have hitherto not systematically treated of the question of

war crimes and their punishment." I quote a few sentences from publicists of repute.

Holland in his War Code (p. 46), writes: "Reprisals need not resemble in character the offense complained of. They may be exercised against persons or property. Punishment of the real offender must be unattainable." And as examples of extreme reprisals he cites the execution of prisoners and the destruction of villages on account of offenses committed in them.

Lüder says: "If the violations of the laws of war by the enemy were passed without retaliation, a belligerent would be at a disadvantage and worse off than his enemy who was guilty of the violation," which is hardly a lofty sentiment. And elsewhere Professor Lüder, quoted by Westlake, writes: "According to known maxims, non-fulfilment by one party deprives that party of the right to claim fulfilment by the other."

Westlake himself treats of retorsion temperately and sanely: "Retorsion in war is the action of a belligerent against whom a law has been broken, and who retorts by breaking the same or some other law in order to compensate himself for the damage which he has suffered and to deter his enemy from continuing or repeating the offense. Where the same law is broken, the proper term is retaliation, but there is no difference of principle between the cases, and the term retorsion covers both." And again, "but the immediate sufferers from retorsion are hardly ever the persons who were guilty of the offense which called for it."

Now add American opinion to German and British. Snow, in his excellent Manual for our Navy (p. 93), declares that "where the offending person or persons can not be reached, and if the enemy refuses or neglects to bring him to trial or punishment, the belligerent has the right of retaliation. It should not be resorted to until an opportunity is afforded the enemy for explanation or redress. If possible the retaliation should be in kind, unless the action of the enemy is in gross violation of the dictates of humanity and of civilized warfare."

If we attempt to deduce from opinions like these the rules which should govern this form of reprisals, they would be something like the following: you may penalize one illegality by committing another; you should try to retaliate upon the persons guilty of the infraction; failing this, and if the other belligerent will not punish his own, you may do to any of your enemies what they have done to you. This includes prisoners.

Two illustrations of the working of these rules in the present war are reported; namely, the harsher treatment of French prisoners in German hands to penalize the alleged unhealthful employment of German captives in North Africa; and the use of asphyxiating gas in retaliation for its use by Germany.

Plainly these rules are open to criticism. For one thing, they may be one sided because the physical power to carry them out may be wanting. If Germany uses asphyxiating gases in war with Serbia, how can Serbia retaliate! How could the Boers reply to British devastation by wasting England.

Again, being founded upon a reciprocal illegality, they disturb the mind, though this may be balanced in some cases by their furnishing a speedy spectacular and workable remedy for a wrong. They are confessedly very limited in application. If state A permits or orders its soldiers to terrorize a population by violence to women, by killing noncombatants or shielding a body of men behind them, by waste and destruction of property, retaliation by B is neither logical nor civilized. If A bombards Rheims cathedral, shall B knock down the cathedral of Cologne?

In this lack of authoritative rules, let us try to apply right reason with future legislation in view. May we not say, for instance, that retaliation should only apply to the person; only to combatants; only to serious offences; only after careful investigation; and only when those committing or ordering the offence are out of reach. Even so, we shall be in danger of drifting into Lieber's "internecine war of savages."

Take a hypothetical case. Submarine attack upon a merchant ship without warning and care for its occupants, in the opinion of most of our body, is murder. Who is guilty? The man higher up, who devised and ordered it? He is out of reach. Therefore a prisoner shall pay the penalty in his place. What prisoner is so suitable as the guilty man's son, and so Von Tirpitz the son is hanged for his father's crime. All this is in accord with the rules. But one may be very sure that several English prisoners would be made to atone for Von Tirpitz' death, and so on in deadly reciprocity. When the first submarine captives were set apart in England as if for special treatment, a similar number of English prisoners in Germany was segregated, awaiting details. It was inevitable.

And, therefore, I would add to the rules governing retaliation the

suggestion that evidence of the offense complained of be laid before some neutral body whose verdict alone should authorize the injured belligerent to undertake the retaliating act. Subject to this condition, retaliation to punish certain offences and prevent their repetition is a just, prompt and effective weapon.

In most cases, however, crime should be punished, not by another crime, but by ferreting out, trying and punishing the criminal, which brings me to the second head, the punishment of war crimes.

Simple crimes of pillage, of lust, of arson and of violence, committed by soldiers, with no military object, should be tried and punished by their own authorities, and this is usually the case, if for no other reason, because without such discipline a force soon loses value. If unpunished, the perpetrators if known and captured may be punished by an enemy. A certain quantity of such crime seems inseparable from war. These, however, are but a small fraction of the violations of the rules of civilized war, of which the victims have a right to complain.

There may be destruction of property out of all proportion to the alleged act which it is intended to penalize.

There may be slaughter of wounded or refusal of quarter in accordance with orders.

There may be new and illegal methods of destruction, or the deliberate breach of old rules.

There may be calculated terrorism.

In such cases it is the principal rather than the agent, or along with the agent, who most deserves punishment. Unfortunately it will not always happen that the fortune of war makes the punishment of such principal a practicable thing. Are we to be content with the punishment of vanquished delinquents only? That would be one-sided justice.

Moreover, the definition of war crimes; the penalty due for property damage as well as for damage to the person; the ascertainment of fact when atrocities are charged; the treatment of prisoners; the intent and justification when religious, educational or charitable institutions are bombarded: these and other questions are too delicate, too intense for *ex parte* determination. They require the judicial attitude as well as the judicial mind.

And so the conclusion is reasonable that the whole matter of trying and punishing war crimes should, if possible, be placed in neutral

hands. That is, that an international court, perhaps through its own referees and assessors, in accordance with a system previously agreed to in treaty form, should on complaint, investigate, judge and affix the penalty to crimes, the said penalty to be executed by that belligerent which happened to have the body of the delinquent in its power.

Two basic theories of punishment are suggested as reasonable. (1) Crimes against the person shall meet with personal penalties—imprisonment or death; while crimes involving property shall be punished by fine, individual or national. (2) The scale of penalty shall be that fixed by the penal law of the country of the accused. The distinction between crimes against the person and crimes involving property damage seems to me fundamental. To kill one's own soldiers for looting may be essential to military discipline and therefore necessary. But the object which we are contemplating is not military efficiency. It is the protection of the non-combatant from abuse and of the person of the combatant from illegal methods of war. The problem therefore approximates a civil rather than a military character. To reckon illegal property damage in terms of imprisonment or death, and conversely to punish personal damage, (sniping or railway wreck, for instance) in terms of property destruction, seems to me both illogical and unjust. The ideal is to punish violators of the laws of war and so prevent a repetition of the offence. If you punish murder by death, devastation by national indemnity, and minor property damage by personal fine, assessing such penalties as the civil and criminal laws of the accused require, are you not most likely to attain this ideal? And, if practicable, crimes should be tried by this international court in the midst of arms, without waiting for the return of peace. Something like this was the suggestion of the Carnegie Commission to inquire into the atrocities of the Balkan Wars, a committee of inquiry to accompany belligerent forces, the details of the scheme not being worked out.

Whether such an international court in the heat of conflict or even after a war could be made workable, could really gather evidence, could have its jurisdiction respected, its penalties enforced, is of course uncertain. Even if agreed to in time of peace, what assurance could we have that in the passion of war it would be respected? Would public opinion be a strong enough backing? Should pledges of property be given in anticipation? Where should the power and duty of executing the law reside? Such questions are easy to ask, but hard to

solve. I am only outlining an ideal. Nevertheless, unless something like this ideal is realized, we may well despair of the future of international law as relating to war. Punishment must follow crime with sufficient certainty to impress the criminally inclined. Punishment of the vanquished only, though better than nothing, fails of this certainty. It will be interpreted as revenge. Punishment of law breakers amongst the victors, as human nature goes, is unlikely except through neutral agencies.

The CHAIRMAN. We will continue the discussion of the topic before us, and I have pleasure in calling upon Mr. Edward A. Harriman, of the Bar of New Haven, Conn., formerly of the law faculty of Northwestern University, and of the faculty of Yale University, and one who has been conspicuously identified with the international law societies of both this country and Europe.

WHAT MEANS SHOULD BE PROVIDED AND PROCEDURE ADOPTED FOR AUTHORITATIVELY DETERMINING WHETHER THE HAGUE CONVENTIONS OR OTHER GENERAL INTERNATIONAL AGREEMENTS, OR THE RULES OF INTERNATIONAL LAW, HAVE BEEN VIOLATED?

ADDRESS OF EDWARD A. HARRIMAN,
Of the Bar of New Haven, Conn.

The simplest way to answer this question is to ask another: What means exist and what procedure has been adopted for authoritatively determining whether any agreement, or any rule of law, has been violated? The means ordinarily provided is a judicial tribunal, and the procedure adopted is a judicial procedure. The means, therefore, for determining whether an international agreement or a rule of international law has been violated should be a court, and the procedure before that court should be judicial procedure. It must be noted that so far as persons within the jurisdiction of the United States are concerned, the courts and the procedure already exist for the determination of questions of international law. To quote from one of our most distinguished American jurists, Simeon E. Baldwin,[1]

[1]American Bar Assn. Journal, I, 521.

> We were the first Power to recognize in the Constitution of our government the existence of such a thing as international law, and the duty of enforcing it. That instrument, it will be recollected, declares that Congress shall have power to define and punish "offenses against the law of nations." Uuder this provision, our Supreme Court has said: "A right secured by the law of nations to a nation or its people, is one the United States as the representatives of the nation are bound to protect," It is not necessary for Congress in passing a statute to punish an offense against that law, to declare it to be an offense against it. That it is such an offense is to be determined by reference to the law of nations itself. Congress simply gives it a further buttress.
>
> Whatever international law may mean to other peoples, therefore, to us it is and always has been an acknowledged body of authoritative rules entitled to enforcement by the United States.[2]

The Constitution of the United States is, of course, subject to amendment, and the proposition laid down by Mr. F. E. Smith in his International Law (fourth edition, page 15), that "international law is not administered by municipal tribunals unless it has been adopted by the State legislature, and such adoption will not be presumed," holds good, even in this country; but the adoption by the people as the supreme legislative body in their organic law, the Federal Constitution, of international law, as part of the municipal law of the United States, was not a temporary adoption, but, as we believe, an adoption for all time. This adoption is a self-imposed limitation on the rights of the United States as a sovereign power. With the independence of our three departments of government, it may be that the executive or the legislative department can violate the rules of international law without effective interference by the judicial department, but the control which the judicial department in any case can exercise over the executive or legislative, depends not upon the physical force of the nine men who constitute the Supreme Court of the United States, but upon the force of the popular will which supports the power of the judiciary. Our sovereign, the people, voluntarily recognizes the obligations of international law. Other sovereigns, less humble, may or may not do the same. When the sovereign is an individual monarch ruling by divine right, and speaking in his edicts as the mouthpiece of the Almighty, recognition of international law as limiting his freedom of action, might be embarrassing. To a free people, however, with a democratic

---

[2]See *The Paquete Habana*, 175 U. S., 677, 700; Hilton *v.* Guyot, 159 U. S., 113, 163; U. S. *v.* Arizona, 120 U. S., 487, 488.

government, the assertion of rights under international law and the acceptance of obligations under the same law, are inseparable acts essential for the preservation of the reign of law upon which, as opposed to the reign of force, free civilization must always depend.

Conceding then, that international law in any country depends for its effect upon its adoption by the municipal law of that country, there is no inherent obstacle to the adoption by all free countries of international law as a part of their municipal law. It is probable that all of the American republics could be induced to follow the example of the United States in this respect, if they have not already done so, and it does not seem at all impossible that England, France and several of the smaller European countries should follow suit. The mere adoption, however, of the rules of international law as part of the municipal law of various nations, will have but limited practical results. The courts of the different nations would disagree as to what those rules are, and to establish a uniform rule, a supreme judicial tribunal would be necessary. It seems entirely out of the question at the present time to constitute a tribunal having the broad powers with reference to nations which the Supreme Court of the United States has with reference to the States. It was difficult enough for the American colonies, speaking the same language and inheriting the same institutions, to form a federal government. It seems out of the question for nations with different languages and different institutions to abdicate their sovereignty so far as to create any supreme federal tribunal. It is not an impossible thing, however, for nations which disagree to submit by treaty particular controversies to the judicial determination of a tribunal selected for that purpose. Plans for the organization of such a tribunal have not fully matured and have been postponed by the great war.

There are some people who are now making very merry over what seems to them the absolute failure of all attempts at the settlement of international controversies in a peaceful manner. *Inter arma silent leges* is an ancient maxim which is proving all too true, but there never was any such maxim and never will be, as *Post arma silent leges*, which seems to be the creed of some of the worshippers of Mars. The existence of law is not disproved by the violation of the law. This is the true answer to those who say that there is no international law, and yet, we Anglo-Saxon lawyers are by tradition impatient with any theories of law that have no practical application. *Ubi jus, ubi reme-*

dium, is the basis of the reasoning of the lawyer, as distinguished from that of the philosopher. Our jurisprudence has developed, not from principle, but from procedure. The evolution of rights has followed the evolution of writs. We demand, therefore, that if international law is to mean anything, there shall be some practical redress for those who are injured by its violation.

It is needless here to elaborate all the arguments which have been made and which the American Society for the Judicial Settlement of International Disputes has done so much to promulgate, to show that it is perfectly possible for nations to agree upon the organization of a judicial tribunal and to agree to submit for the determination of that tribunal specific controversies to be determined according to rules of law agreed upon to govern the tribunal. Beyond this we can not as yet go, but certain further steps in the same direction are possible and desirable. The first is an agreement upon an international code or upon portions of an international code by as many nations as possible. When the principles of law which are to govern the controversy are agreed upon, it will be easier in the first place for the parties themselves to settle the controversy by agreement upon the application of those rules to the particular case; and, in the second place, if they can not agree as to the result, to agree that an impartial judicial tribunal shall apply the rules of law to the facts of the particular controversy.

Another step in advance which is not at all impossible is an agreement upon a court or a permanent organization from which in some manner the judges of the particular controversy shall be chosen, perhaps as a struck jury is chosen, by striking from the panel those to whom the other party objects. Instead of beginning with the ideal of a federation of the world, a parliament of man and a supreme court of humanity, we must begin with the particular and the specific if we are to accomplish anything of important practical value. Probably a code of international law for the world is out of reach at the present time or in the near future, but it is by no means certain that a code of international law for the American republics is out of reach, or that the labors of those jurists who are now at work on such a code will prove in vain.

The Hague Court of Arbitral Justice at the present time is hidden by the battle smoke that floats so near the Palace of Peace, but a Pan American Court for the decision of controversies between American

republics does not seem to be an empty dream. At present we are witnessing in Europe not simply a war of great Powers, but a war of ideals. It is one of the great crises of the world's history when the struggle is not merely between nations at war, but between creeds;—the creed of the free-booter, "The good old creed, the simple plan, that he should take who has the power, and he should keep who can," and the creed of the lawyer that the power of the sword exists for the protection of human rights, which the sword may destroy but does not create. The most pacific advocate of the reign of law does not despise the protection of a policeman against the highwayman, but he does not bow down and worship the policeman, nor does one who advocates adequate preparation for national defense thereby become, as some would have us think, a believer in militarism.

The essential limitations on the jurisdiction of any international court are sometimes overlooked by those who advocate the creation of such a court. Certain positions not recognized as part of international law have been taken as matter of policy by particular nations from self-interest or from a desire for self-preservation. It is too much to expect that these nations will agree to abandon claims which they have thus made simply because such claims are not consonant with the general principles of international law. Thus, for example, the Monroe Doctrine of the United States is a doctrine in support of which the United States in the past has been willing to fight. If the United States should become either too proud or too humble to fight for the Monroe Doctrine, that doctrine will disappear; but so long as the United States is prepared to exercise force in support of that doctrine, as it has been in the past, the doctrine becomes an important factor in international relations, although it is not a rule of international law.

Another inherent limitation on the jurisdiction of the international court, is the fact that the doctrine of the equality of States is a fiction. "This fiction," says Mr. F. E. Smith, "has no doubt reacted upon international sentiment, and in this way prevented much wrongful aggression, but it must be noted that it has little correspondence with the facts of international life." The States of the American Union are all equal before the law, and their equality, except perhaps temporarily in the South during the reconstruction period after our Civil War, has never been denied. The States are equal before the law; that is to say, when they appear before the United States Supreme Court, no State can claim any peculiar right or privilege as against any other

State. The States are not equal, however, in legislative power, for although by the Constitution they are given equal representation in the Senate, representation in the House of Representatives is based substantially upon population.

By analogy it may be possible to agree that, so far as the application of conceded rules of international law is concerned, great states and small shall be upon an equality before an international tribunal. Clearly, however, it is impossible that in the determination of what the rules of international law are which shall be applied by any international tribunal, weak states shall be upon an equality with the strong. Weak states in fact have been deprived in many instances of what are asserted to be the normal rights of a state, either with or without their consent. Belgium, Luxemburg and Switzerland have been neutralized and thereby deprived of the theoretical right to make war and to enter into any political alliance with other states. Cuba has been placed by the Platt Amendment under the protection of the United States with reference to its foreign relations. The Monroe Doctrine asserts the right of the United States to prevent colonization in this hemisphere by any European Power, and the appropriation by any European Power of additional territory in this hemisphere. It thereby operates as a limitation upon the right of European Powers to acquire territory, and upon the right of other American Powers to dispose of territory to such European Powers. With reference to the application of the Monroe Doctrine to the controversy between Venezuela and Great Britain, an English critic says with reference to our claims:

> If the claims then made are sanctioned by acquiescence so as to become a portion of international law, the doctrine of equality may be finally banished from our text-books, to be replaced by a legal hegemony on the part of the United States over the whole of the American continents.

At the time of the present Pan American Congress it seems appropriate to point out that the Monroe Doctrine as enunciated by President Monroe, was not simply in the interest of the United States, but in the interest of all American states. If the assertion of the Monroe Doctrine at the present time gives offense to our Latin-American neighbors, some of whom have increased and prospered so greatly since its original promulgation, it should be remembered that

it is the assertion of that doctrine by the United States which has operated for the protection of the weaker American republics against the greater strength of the European Powers. The remedy, therefore, for any dissatisfaction on the part of our neighbors, is not the abandonment of the Monroe Doctrine by the United States, but the joinder of the other American republics as parties to that doctrine, so that it shall become not simply an American, but a Pan American doctrine for the protection of the Western Hemisphere.

This paper was prepared some weeks ago, and the fact that since it was written the suggestion above made has received the strongest support in official quarters, should not be overlooked. Whether the Monroe Doctrine was English, or American, or Pan American in its origin, is a question which may be left to historians to discuss, but the incalculable benefit of that doctrine to every nation in the Western Hemisphere has been made so obvious by the present European war that the future of that doctrine as a permanent Pan American doctrine seems assured.

The practical steps to be taken in answer to the question asked at the beginning of this paper, are as follows:

First, as soon as the present war is over, a serious effort should be made to complete the organization of the Permanent Judicial Court at The Hague.

Second, a code of international law should be prepared to which the consent of as many nations as possible should be obtained, and this consent should be in the form of a treaty providing that as between the nations consenting to any particular article, that article shall constitute the law on that point in any dispute between such nations. "The most certain guide, no doubt," says Mr. Justice Gray, in Hilton *v.* Guyot, 159 U. S., 113, 163, "for the decision of such questions, is a treaty or statute of this country."

Third, without going into details, the procedure before the Permanent Judicial Court should be judicial in character. Here there is great room for the work of experts in devising a form of procedure which shall be reasonably intelligible and satisfactory to those lawyers and judges who are familiar with common law procedure, on one side, and to those who are familiar with the civil law procedure, on the other. Certain rules, as general as possible, should be laid down, and in other respects the details of procedure should be left, as far as possible, to the agreement of the parties.

Fourth, where the parties have not agreed upon the rule of international law to be applied to the particular case, either by adherence to a general code, or by a specific treaty, like the Treaty of Washington which fixed the law for the arbitration of the *Alabama* claims made by the United States against Great Britain, the parties should be permitted to submit to the tribunal itself the determination of what the rules of international law are upon the question involved.

It will be noted that all these suggestions proceed upon the theory of the voluntary submission by the parties to a judicial determination of the controversy between them, and the criticism will undoubtedly be made that these suggestions fail to provide for the prevention of war because the parties may not agree to submit to a judicial decision. The answer to this criticism is simply that war can not be prevented by lawyers, and that it has not yet been prevented even by the clergy. The Constitution of the United States provided the most perfect judicial machinery for the settlement of controversies between the different States. No body of lawyers or jurists can hope to provide a more perfect system for the settlement of international disputes. Have we ever had greater statesmen than those who framed the Constitution of the United States? And yet, within seventy-five years from the time that Constitution took effect, the descendants of its framers were engaged in killing each other with a devotion and enthusiasm not surpassed by that of their ancestors. To expect that we lawyers can do for the world, made up of varied races, what our ancestors could not do for their own descendants having the same blood and speaking the same language, is to dream peacefully of Utopia.

On the other hand, to assert that our work as lawyers must be barren of result in international affairs, and that attempts to secure a judicial settlement of international disputes are useless because all Europe is at war, is as unreasonable as to declare that the United States Supreme Court is a useless institution because it could not prevent the war between the States. We should face our task as lawyers, owing a duty to our country and to the world, avoiding, on the one hand, the presumption of exaggerating the nature of our task, and, on the other, the folly of refusing to do what we can, simply because we can not do all that we might wish.

If this paper fails to answer the second question set for discussion this morning, "In case of violations of international law, what should

be the nature of the remedy, and how should it be enforced?" it is for two reasons: First, limitation of time, and, second, the fact that as against the nation violating rules of international law and refusing to submit to a judicial decree fixing the consequences of that violation, there is only one remedy, that of force. How that force should be organized and to what extent the injured nation should receive the assistance of other nations as against the violator of the law, is a matter which is not yet ripe for discussion from a legal standpoint, but at present falls wholly within the domain of international politics and diplomacy.

The CHAIRMAN. The Chair regrets to announce that our Latin American friends, whose papers are listed for today, are not able to be present. Their papers will be reported, and will not be submitted at this time. The meeting will now stand adjourned.

Thereupon at 12.15 p. m., the meeting adjourned.

THIRD SESSION

Joint Session of the Society and the American Political Science Association and the American Society for Judicial Settlement of International Disputes

Wednesday, December 29, 1915, 8 o'clock p.m.

The meeting was called to order by Dr. SAMUEL CHILES MITCHELL, President of Delaware College.

The CHAIRMAN. Ladies and gentlemen: We have tonight a joint session of the American Society of International Law with the American Political Science Association and the American Society for Judicial Settlement of International Disputes.

I am sure it brings great grief to us all, and brings us also nearer to the dire experiences of Europe, in that the gentleman who was to preside over us this evening, Mr. Theodore Marburg, President of the American Society for Judicial Settlement of International Disputes, was called to Europe by the wounding of his son. I am sure there is not one here that does not appreciate the great services that Mr. Marburg is rendering to the cause of international good-will, and I am sure that the sympathy of every one present goes out to him and to his family tonight.

The first subject before us is "International Disputes of a Justiciable Nature," and I have the honor to introduce Dr. Jesse S. Reeves, Professor of Political Science in the University of Michigan, who on this occasion represents the American Political Science Association.

THE JUSTICIABILITY OF INTERNATIONAL DISPUTES

ADDRESS OF JESSE S. REEVES,
Professor of Political Science in the University of Michigan

The appalling record of the past year and a half ought to make us, interested in international law, extremely modest. Professing that we expound international law as it is, we have been deluding ourselves and really setting forth international law as we believed it ought to be. The universal bankruptcy of normal international relationships has

shown to us how great a gap there is between that which we had conceived to be and that which really exists. Many of the foundations of international law we now see to have rested upon a conception of international society which did not really obtain. Perhaps, too, although professing contact with the actual, we have been living in an unreal world, a world wherein the ideal was given a much wider range and play than we were justified in believing. Any attempt to reconstruct the formal bases of international law—and such reconstruction must be made—must take account not only of the experiences of the present war, but of the long series of half-submerged elements which led to the present disaster almost with the inexorability of the forces of natural law. Shocked and benumbed as we are by the constant revelations of horror in these past months, there is also the awful realization that, after all, what has taken place has been largely the result of factors seemingly without immediate human direction.

Any plan for a permanent peace, and for the amicable settlement, after this war is over, of disputes between states, must take into consideration these facts, and look at international society not as we have looked at it, as a static condition of mankind, but as one in which there are dynamic factors too vast and intricate for any decisive plan adequately to include and reckon with all the circumstances. These dynamic factors have to do not only with the relations of states with each other, a subject to which international law in the past has confined itself, but with the larger relations of groups to groups both within and without states, of individuals to individuals, of world movements of population, of earth-hunger and its appeasement, and of the strivings of international commercial competition. These things must be reduced to the régime of law, to an acceptance of a universal *status quo;* and in the past this has never come about except under a universal imperial dominion, or world-state.

Slowly and painfully must the edifice be reconstructed, from foundation to superstructure. The basis of a régime of law among states must be those really juristic principles, recognized by the members of the world-society as not repugnant to the realization of national ideals, on the one hand, and, on the other, as fitting in with the generally accepted ideals of justice and of fair dealing on the part of peoples within a state.

Such a limitation may seem highly reactionary, and to run counter to the accepted theories of international law; but, if you will permit

it, international law has been in the past something of an esoteric science. The formal elaboration of its principles has been made too often by those who have not only an idealistic conception of world relationships, but by those who have from their position had too little contact or even sympathy with the actual conditions of popular life. After all, international law has been written and to a large extent been put into effect by those having the aristocratic point of view. The determination of the foreign policies of a state has never been—perhaps can not as yet be—determined by popular methods. What parts of international law can properly be claimed to fall within the limits just set forth? Can we include what have been called for centuries the primordial or absolute rights of states? An international law built upon these principles connects at once with the absolutist theory of the state, makes world-society simply the sum of the relationships between primordial units, and has little to do with what lies back of and within such units. It makes such units equal with each other in legal rights and legal duties. It stresses absolute independence, together with a theory of sovereignty associated with the organic theory of the state. At certain periods in the development of the world such a group of conceptions makes for progress. At other periods it makes for reaction, just as the doctrine of natural rights was revolutionary in 1776 and 1789, and has become reactionary under a newer theory of social justice.

The doctrine of natural rights within the state can not be eliminated. It must be restated. A natural right today we conceive to be one which society guarantees to the individual, not merely that he be protected in a fixed sphere of action, but because by such guarantee to the individual the rights of the whole are best preserved and protected. In like manner the traditionally primordial rights of states must in time be restated, not in terms of the state, but in terms of humanity and of a world-society. The state, according to such a theory, is to be protected in its international legal rights and duties, not in order to guarantee its existence as an end in itself; it is protected in order that the good of the whole of humanity and civilization may be advanced.

If this statement be correct, then we must recreate and reconstruct the doctrines of independence and equality if not in the light of pragmatism at least in terms of social dynamics. The theoretical position of sovereignty within the states must be attacked anew, even if it in-

clude a reconsideration of the conception of the state as modified by the various factors which give it existence. We are met at the outset with the objection that such a doctrine does not square with the facts of actual world-life. Perhaps not as yet; but it is incontestably true that the formal bases of Grotian international law do not accord with the actualities of twentieth century world-life.

International law has been traditionally defined as the body of rules which states habitually observe in their mutual dealings. This definition raises the question: Why are certain rules habitually recognized? Why habitually? Because, in the first place, such rules are assumed to fit the ideals of international conduct ingrained in the habits of civilized mankind generally; and secondly, that such common ideals do not run counter to the policies of states in their ordinary mutual relationships. The observances of international law, after all, we must confess, depend largely upon national policies. In so far as national policies coincide with certain generally accepted justiciable principles, we have a stable foundation for international law. Where policies intervene we have a situation in which dynamic factors have not yet been resolved, and hence the law actually does not exist. To illustrate: the doctrine of the equality of states is not effective under any principles of policy such as that built up under the doctrine of balance of power. In strict law, one state has the right to sell territory to another and to put, after such cession, the other Power into possession. Yet there are few quarters of the globe where such a legal right can be exercised. The legal right, let us say, of Denmark to sell its West Indian possessions, and to put the vendee into possession is unquestioned. That the policy of the United States would interdict such a transfer is equally apparent. With the universal validity, therefore, of this elementary legal right, the United States is not in accord, and here we get at the essential difference between justiciable and non-justiciable controversies in international law.

The term "justiciable" has been made use of in English for many centuries and it usually carries with it the idea of a court proper to settle controversies. The jurisdictional idea is paramount. Now the creation of a court and the setting up of its jurisdiction are, to that extent, a recognition of a juristic *status quo*. Such a conception was conspicuously absent from the Federal Court of Appeals under the Articles of Confederation. The notion that legal coercion is inseparably connected with the life and vigor of a court means acceptance,

voluntary or forced, by the peoples over whom the jurisdiction is given, of a juristic *status quo*. The setting up of a court and the giving to it of jurisdiction mean the possession, by the parties under the jurisdiction of the court, of common legal conceptions and principles, at least for the purpose of maintaining the jurisdictional efficacy of such a court.

International relationships must rest, as was recently said by our distinguished Secretary of State, upon a common regard for law and humanity. Without such an acquiescence on the part of governments of states in the principles of law and humanity, no international court can be effective. There must, however, be not merely a passive acquiescence in such principles by the peoples of the various countries whom the governments merely represent, but an aggressive belief in such principles which, if need be, might be translated into action. The provision in international arbitration treaties, that questions vitally affecting the honor or the independence of states are not subject to arbitration, although frequently criticised in the past, is seen after all to rest upon a profound psychological basis. Upon such questions there is not yet a common factor of legal ideas sufficiently in harmony with common national policy, to the extent that any real justiciability is possible.

An illustration of this may be seen in two incidents described by Mr. Thayer in his recent life of John Hay. The first is the attitude of Mr. Roosevelt towards Germany's alleged aggressions against Venezuela following upon the so-called pacific blockade in 1902. Germany was forced by the United States, it is said, to arbitrate the question of her claims against Venezuela. Certainly it would seem that these claims were properly justiciable in a court of arbitration, and a precedent for forcing such settlement was found in President Cleveland's policy towards Great Britain in 1895. On the other hand, President Roosevelt, assuming that the claim of the United States with reference to the Alaska boundary was eminently proper and just, is said to have served notice upon Great Britain that in certain contingencies the United States would refuse to arbitrate the boundary question and would proceed to draw a line for itself.

Both questions were properly justiciable, and yet the underlying reasons why arbitration was had in both cases were kept concealed from the public. That the United States was eminently successful in both as a matter of policy is proved by the result; but that the peoples

of the countries concerned were educated to a more rational method for the settlement of international differences may well be doubted. The refusal of Germany to arbitrate, and the refusal of Great Britain to accede to our method of arbitration, might conceivably have resulted in a check to the attainment of the policies of the United States, and in a great retardation in the acceptance of the principles of international arbitration. If so, we should have had a breach between this country and the nations mentioned which would have been justified on the grounds of American policy. Popular approval would then have been sought not so much for the purpose of justifying international arbitration as a principle, but to maintain what were assumed to be the paramount rights of the United States in the Western Hemisphere. This is said not with the idea that the policy of maintaining such a position by the United States is inherently wrong, but to suggest that what made the disputes really justiciable was not in any sense based upon a popular demand for arbitration, but because the policy of the United States overrode the narrower legal considerations.

The earlier case, when President Cleveland demanded that Great Britain arbitrate the Venezuela boundary, still more clearly illustrates the difference between a popular demand for a legal settlement of an international dispute and the popular approval of American policies. That Mr. Cleveland's aggressive attitude with reference to Great Britain and its refusal to arbitrate the Venezuela boundary controversy was popularly acclaimed in this country, there can be no doubt; but popular enthusiasm was aroused for the support of a national policy irrespective of the demand for arbitration which the policy attempted. We can not truthfully say that popular opinion in this country can be aroused with reference to any particular method of settling international disputes. It can, however, under skillful direction, be aroused for the support of policies which the Government of the United States assumes with reference to any foreign Power. This we may deplore, but we must recognize that such is the fact. These illustrations, it is believed, show how far, even in a democratic republic like our own, we are from an acquiescence, governmental or popular, in a general international legal *status quo*.

It has been suggested that the United States Supreme Court, with its jurisdiction over controversies among States, offers a pattern for a possible world court wherein all matters of international differences may be decided. Assuming that such a world court could have the

coercive power of a league to enforce peace, guaranteed by the countries of the world, it would still lack the important basis which the United States Supreme Court has in its jurisdiction over State controversies. When a State is admitted into the Union, it is admitted upon a plane not only of legal, but also of a certain political, equality with the other States. No such thing is possible as the aggression of one State upon another with reference to territory, or commerce, or the movements of population. In other words, the admission of a State into the Union proceeds upon the recognition of the great constitutional *status quo*.

Any plan for a world court, backed by a league to enforce peace, must proceed upon the theory of an accepted *status quo* not only with reference to the legal relations of states with each other, but with reference to conditions within states, governmental and political. The map of the world must be fixed as the map of the United States within its boundaries is fixed. Things as they are, or as they will be when such a plan is put into effect, must be taken as the basis for all time to come. *De facto* states will be *de jure* states; *de facto* governments, *de jure* governments—to reverse the principles of the Holy Alliance, which is the attempt in history most nearly akin to the one suggested.

If there be controversies among the States of the Union which are not justiciable, it is hard to conceive of them since the Civil War. The position of the State in the Union is fixed; and at all points, at least so far as its relations with other States are concerned, which might lead to aggression, it is susceptible of some kind of legal coercion. If we conceive of the question of secession as in the nature of a controversy between States, such a controversy was not justiciable. Not being justiciable, the present *status quo* was reached by war.

The range of justiciability with reference to controversies between the states of the world is limited, then, by the common factor of juristic principles common to all civilized peoples and accepted by the governments of such peoples as in harmony with their state policies. That this range can be of but slow growth must be admitted. At present it would seem that the so-called international mind no longer exists. If the present war is productive of any good, it must be in the creation of a new international mind, based not upon an unanimity of expression by the governments of states, but by the common convictions of a militant humanity.

The comparatively small number of the subjects of international law hinders rather than advances the range of international justiciability. A norm of law is most easily ascertained when it affects a great mass of legal subjects. When the parties to international relationships number but half a hundred, the usual rarely occurs, the unusual dominates. Within a state the greatest validity is given to a rule of action when that rule is applicable to and adopted by a great mass of legal subjects. Only out of such a scheme does a true norm of law proceed; and in the long run the sanction of a rule of municipal law is most potent when the rule attaches to the greatest number of legal subjects.

It is in connection with this idea that the relative inefficacy of law-making treaties is to be ascribed. What Savigny a century ago so pertinently described as the proper basis of the codification of municipal law—a long period of development of common legal interests and ideas—founded upon a conscious natural solidarity—should be considered with reference to international law. The so-called great international law-making treaties are at the present time but monuments of more or less benevolent aspirations. Like laws adopted by a state in unmindfulness of actual conditions or of the legal prepossessions of the people, many international statutes have broken down because they did not express the common fund of ideas with respect to international life. Take, for instance, the provision of the Hague convention with reference to the inviolability of neutral territory. That convention was ratified by the Senate of the United States and is now the supreme law of the land. Yet who can seriously maintain that the world or even the United States is educated up to the militant acceptance of such a general principle?

Again, geographical factors reduce the range of justiciability of international disputes. The influence of these factors upon international law is incomparably greater than ordinarily one is led to believe. We must face the fact that the old idea of eternal principles of international law, valid *quod semper, quod ubique, quod ab omnibus,* is modified by the specific situations of the various countries of the world. To admit that such factors wholly prevail over the rules is to deny that international law exists; but that geographical factors do modify these rules is never more evident than it is during war. The peculiar situation of the West India Islands with reference to the United States, of Portuguese Southeast Africa to the Boer Republics, of the Scandinavian countries and Holland to Germany—these actually modify what otherwise might be considered as universal principles;

and the extent to which this modification takes place practically limits the range of justiciable methods in the settlement of international disputes.

Finally, there must be recognized what may be called the sphere of an international law of crime. It is possible that in combatting Austin's doctrine that international law is not true law, we are in danger of neglecting what he claimed for it, a positive international morality. Such an attitude is more likely as long as international law is based upon a political philosophy which sets forth the state as a person essentially non-moral. Acts which shock the most obvious claims of humanity come to be looked at not as international crimes but as international torts to be adjusted through diplomatic apology and assuaged by money payment. Anything whether in the form of certain kinds of pacifistic propaganda or as the smugly polished phrases of diplomatic utterance, which glosses over the essentially anti-social and therefore criminal nature of certain international acts, may contribute to a fatal confusion of ideas. This among a people already far too regardless of the value of human life may dull its sensibilities, weaken its moral fiber, and destroy its desire and ability to defend those things which are of greatest value to civilization and society.

If what has been said is regarded as a confession of failure, I shall feel that it has been said to no purpose. My idea is rather that we must, as interested in a noble science, take account of things as they actually are and realize that the international law of the future can not be founded upon the one and single principle of state personality; but that it will rest upon the slow and painful accumulations of experience; not that it should depend upon diplomatic opportunism alone, but upon the wider principles of human kinship and of humanity; that international law after all, to be a valid law among states, can not be merely the idealistic portrayal of the philosophic jurist or of the policy of expediency adopted by the bureaucrat. It may be that the state is but a passing phenomenon. It must be that the theory of the state as a juristic person must be reëxamined in terms of humanity. Until this is done the prospects of the future in the way of the settlement by legal methods of all or even the more important international disputes can not be predicted with anything like confidence.

The CHAIRMAN. We are now to be favored with an address upon the subject, "The Nature and Form of the Agreement for the Submission of Justiciable Disputes to an International Court," by Dr.

James Brown Scott, whose influence has been creative in all of this work with reference to international relations. Dr. Scott, on this occasion, represents the American Society for Judicial Settlement of International Disputes.

THE NATURE AND FORM OF THE AGREEMENT FOR THE SUBMISSION OF JUSTICIABLE DISPUTES TO AN INTERNATIONAL COURT

ADDRESS OF JAMES BROWN SCOTT,
Lecturer on International Law at Johns Hopkins University

Mr. Chairman, Ladies and Gentlemen: I suppose after the very careful and scholarly address that we have heard tonight, stating very fairly, squarely and frankly the difficulty in the settlement of international disputes by means of a judicial tribunal, that it becomes one to be somewhat modest in stating the possibility of a submission of justiciable disputes.

And yet, even admitting that the difficulty is just as great as has been stated, that is all the more reason why we should take it up, carefully consider it, and study it, in order that we might find some way of defining justiciable disputes, and, when defined, of submitting them to the decision of an international tribunal.

I am not at all pessimistic as to the outcome or as to the future of international law. I believe it exists, notwithstanding the fact that the newspapers tell us today, and that speakers proclaim from almost every platform, that it is a non-existent thing. I am strengthened in my belief that it is a system of law existing here and everywhere when I find that each belligerent appeals to international law as the test of the validity or the propriety of the action of its enemy; because if international law does not exist as a system, the appeal to it is futile, is nonsensical. The nations appealing to international law and denouncing its violation by the enemy, know perfectly well what they have in mind, what principles exist, and what principles have been violated. And the enemy of the belligerent so appealing to international law likewise appeals from the same standard.

I regret, of course, that it may seem necessary to refer, for the proof of a system, to its violation. But I have put the existence of international law upon the lowest possible level, namely, that those

nations that do not observe it nevertheless appeal to it as the standard of action.

In the next place I know, and I take it we all know, if we reflect, that it is just such times as this that always have produced international law. Mr. Root, last night in his address, and Mr. John Bassett Moore, in his address, stated that the horrors, the hardships and the unspeakable brutalities of the Thirty Years' War, when law seemed to have been thrown to the winds, resulted in the formation of principles of law, whose reasonableness appealed to the nations and laid the foundation of the system of modern law between the states which we call either the law of nations or international law.

I believe that just as the greatest possible progress resulted from the Thirty Years' War, in which international law or the rules supposed to have effect between nations were violated, so I believe that there will result from the present war a great development in international law, and the desire to conform the actions of nations to its principles. I am optimistic enough to look forward to the development of a sanction for the observance of the rules of international law for the future as a result of this conflict, just as a system of international law was the unexpected but greatly welcomed result of the horrors and unspeakable misdeeds of the Thirty Years' War.

But I am not here tonight, Mr. Chairman, to speak on that subject. I was unwilling, however, to allow it to pass, to allow the statements of the preceding speaker to pass, without at least confessing my faith in the existence of the system, and in the certainty of its development in the future; because a standard of conduct, a system of international law, is absolutely necessary to the existence and to the regulation of states, and being necessary, it will come into being. I have no fear whatever of the future; I merely have, if I may say so, a fear and a horror of the present.

Now, Mr. Chairman, I take it that before we are to reach an agreement, before we are to propose an agreement for the settlement of justiciable disputes, we should at least know what international disputes are. The preceding speaker did not venture to define justiciable disputes; he contented himself with the difficulties involved in reaching a conclusion, difficulties in analyzing the elements that might enter or should enter into the definition of justiciable disputes.

I will make, merely for the purpose of this address, not a definition, but a statement, that a justiciable dispute is one which in the ordinary

course of events can be presented to a court of justice—that is, presented to a court of justice and is decided by a court of justice. What a justiciable dispute is, is a legal question, and is a question for a court to settle. If you discuss this question with European jurists or publicists they will tell you very frankly and very honestly from their standpoint that the nations themselves must decide what is or what is not justiciable, and that a court can not decide properly what is or is not justiciable, and that nations would not be justified in submitting a question as to the nature of a justiciable dispute to an international tribunal.

The answer to that is that the Supreme Court of the United States has been in the habit for the past century or more of passing upon disputes of a justiciable nature, and that when the court finds that a particular case presented to it is political, it refuses to take jurisdiction. When it finds it is a justiciable dispute and that its jurisdiction is large enough to include this particular dispute, it accepts jurisdiction of it and decides it. In confirmation of this I refer merely to the recent case, from the State of Oregon, where the Supreme Court declared the condition involved in its submission to be political, and refused to assume jurisdiction.[1]

If the states are unwilling to refer to an international tribunal the question as to what shall be considered justiciable disputes, they may declare in the agreement that certain transactions, certain conflicts, certain differences, shall be regarded, for the purposes of the agreement, as justiciable. In other words, that they will be presented to the tribunal for decision, and that they will abide by the decisions of the tribunal.

I would say, therefore, that it seems to me a definition is possible. Although it may not be a scientific definition it may at least be a workable one, because courts of justice have separated the elements, or are in a position to separate the elements, that enter into a dispute, and putting aside the political elements to enter into a settlement of merely justiciable disputes.

But if the agreement is to be entered into, it should be kept, and there should be some assurance that an agreement to submit justiciable disputes will be observed by the parties to the agreement. How is this to be done? There are various ways of approaching the question.

---

[1] Pacific States Telephone and Telegraph Co. *v.* Oregon, 223 U. S., 118.

We sometimes make treaties without any time limit; the treaty declares that it is to be perpetual, or the fact that there is no time limit involves the consideration that it is to remain in effect and that a right is not given to either of the contracting parties, if there be two, or any of the contracting parties, if there be many, to abrogate or to modify the treaty.

I should think that in a question where we are, as it were, upon untried ground, the part of wisdom would be to limit the agreement to the minimum. That is to say, to select, if you choose, certain restricted categories; to agree to submit these categories to an international tribunal, limiting, if it be thought advisable, the duration of the agreement to a certain period of years, with the further clause that it may be continued from year to year if not denounced at a particular time. My purpose is not to make it difficult for nations to observe their agreements, but to make it very easy to observe them by limiting them in scope and extent of time.

Again, I should think that another very important consideration is that it should be clearly understood that when the agreement is entered into, whether for a period or without a determinate period, it is to be observed. And here we are upon recognized ground.

Without attempting to enter into the difficult and complicated technicalities inhering in this part of the subject, I would like to say that in 1870 Russia took advantage of the Franco-Prussian war to abrogate by its own action, the provision of the treaty of the Congress of Paris, forbidding the presence of Russian war vessels in the Black Sea. That action appeared to have shocked the conscience of Europe, with the result that a conference was held in London and a solemn declaration promulgated in the following form:

> The signatories of the Treaty of Paris [mentioning them by name, the principal ones being France, Prussia, Great Britain, Italy—then Sardinia, Austria-Hungary, Russia] recognize as an essential principle of the law of nations that no Power can repudiate treaty engagements or modify treaty provisions, except with the consent of the contracting parties amicably obtained.

It is no answer that treaties existing some fifteen or sixteen months ago have been violated. Solemn agreements are often violated, but that is no reason why agreements should not be made. It is a reason why some method should be devised in order to secure the observance of treaties.

It is fair to say that no matter how strong the present, or any Power at present, no Power and no combination of Powers is stronger than the past; and the past has declared in favor of these things, and when nations return to their senses they will themselves declare in favor of these things, and little by little they will be more inclined to observe them, when they find, as no doubt they are finding, that the way of the transgressor (without stopping to define who is transgressor) is hard, very hard.

Now, in the next place, we will consider the form of the agreement. Here, again, we stand upon recognized ground. We do not need anything new; we simply need to refer to the past. The best example I can give you of the form of an agreement of this kind is from the Universal Postal Convention, to which the independent nations of the world and self-governing colonies are parties. It is provided in the Postal Convention, signed at Rome May 26, 1906, that in case of disagreement arising between or among any of the signatory Powers, the dispute in question shall be referred to arbitration, and the form of the arbitration is specified. May I read you the exact language of the agreement:

> 1. In case of disagreement between two or several members of the Union, relating to the interpretation of the present convention or to the responsibility of an administration arising from the application of the said convention, the question in dispute is regulated by an arbitral judgment. For this purpose each of the administrations concerned chooses a member of the Union not directly interested in the matter.
>
> 2. The decision of the arbiters is rendered by an absolute majority of votes.
>
> 3. In case the votes are equally divided, the arbiters choose, to decide the difference, another administration equally disinterested in the dispute.
>
> 4. The provisions of the present article apply equally to all arrangements concluded by virtue of Article 19 of this convention.[2]

In other words it would appear, that in order to reach an agreement for the submission of justiciable disputes, we may follow the example of the Universal Postal Convention, and form by compact what might be called a justiciable union, a judicial union, or a juridical union, as

[2]Translated from *Recueil des Traités du XX^e Siècle*, 1906, p. 340.

you may prefer; that all parties so forming the union shall agree to submit their disputes of a certain character, to wit, justiciable disputes, the instrument of submission to prescribe the form of treatment which they shall receive. If the disputes are to be submitted to arbitration, then arbitrators should be appointed. If the disputes in question are justiciable and are to be submitted to a court, then the nature of the court and its composition might be stated.

The difficulty about agreements of this kind is that they do not create machinery and have it in existence at the very time when disputes are to be submitted, and they leave the tribunal to be constituted at the very time when the nations are in the least inclined to constitute it. In other words, they attempt to thatch their house or roof in a storm, which is not regarded as good policy.

Now you might ask, and it is a very fair question: Suppose the agreement has been entered into and limited in the manner I have proposed, what guarantee are we to have that the nations will submit their disputes? To be sure, they have entered into an agreement so to do, but we know that agreements are violated, have been violated and undoubtedly will again be violated in the future. Mankind has not been made perfect by statutes, and nations will not be perfected by international compact. What should we attempt to do in this case? Should we attempt to provide some means of enforcing the resort to submission? Many people whose judgment is entitled to great respect believe that there should be something approximating a league of peace, enforcing the submission of disputes to arbitration before there can be a resort to arms. Others, whose opinions are equally entitled to respect, such as the honored gentleman who spoke here last night, Mr. Root, seem to be of the opinion that the one solution is the development of a public opinion strong enough and insistent enough to secure the submission—and if I remember aright, he went so far as to say that public opinion was the ultimate force.

Again, it may be said that if the submission has been made and the judgment rendered, how can we rely upon compliance with the judgment, because it is a futile thing to negotiate a treaty and to submit a dispute to a tribunal, when the judgment of that tribunal is not to be observed. The answer to that, at least one answer to that, is that since the reëntry of arbitration into the world by the Jay Treaty, there is really no well authenticated case of a refusal to abide by a judgment. There have been some refusals to submit to arbitration, but when

the nations have agreed to submit to arbitration and actually have done so, they abide by the decision of the tribunal of their own choice.

It is frequently said that it is impossible to render an agreement effective unless there be force behind the tribunal to execute its decrees, to which I would reply that the duty of a court is to judge. The duty of lawyers is to ascertain the law and to apply it. It is not the duty of a court to enforce its decisions. It is not a judicial duty. That is a duty of the executive.

But that does not reach the question. The Supreme Court of the United States has decided, not once, but a number of times, and upon careful, solemn deliberation, that there is no power in the Government of the United States, or in any department thereof, to enforce a judgment of the Supreme Court of the United States against a State of the American Union. That was laid down especially in the case of Kentucky v. Dennison, 24 Howard's Reports, at page 66, and the material portion of that judgment I shall read: "But if the Governor of Ohio refuses to discharge this duty," a duty of extradition laid down and prescribed by the Constitution of the United States and enforced by an Act of Congress of 1793, "there is no power delegated to the General Government, either through the judicial department or any other department, to use any coercive means to compel him."

But, going back for a moment, it may be said that there is in the United States a power to compel a State to appear before the Supreme Court and litigate in a suit brought. If a suit is brought by State A against State B in the Supreme Court of the United States, and State B does not appear, judgment is taken by default, and therefore there is some compulsion. But if we bear in mind the judgment of the court in the Dennison v. Kentucky case, that there is no power to enforce a decision of the Supreme Court against a State of the American Union, it is seen, I take it, that the idea of compulsion is an illusion in such cases.

Without attempting to express a positive opinion on a matter which is a source of great doubt and perplexity, I would venture to suggest that, although it would be better if some method could be devised of enforcing the submission of justiciable disputes agreed to be submitted, and although it would be in the interest and well-being of nations to provide some force to secure the execution of such international judgments, if they be rendered and not obeyed, nevertheless my point is that we should not be deterred by the fact that there is no known means

at present of forcing submission of justiciable disputes, or of securing compliance with the judgment of an international tribunal. And I cite with very great confidence the experience of the United States that in this close Union of ours it has been found possible to institute a court in which a State may sue a State without investing the Government, or any department thereof, either with the power of haling a State into court, or of executing a judgment of the court against the State.

Of course international machinery providing for both of these contingencies would be very much more efficacious if the remedy or proper means could be found. But the mere fact that such can not be found or has not been found at present does not seem to me to be a deterrent against an agreement to conclude a convention of the kind specified, the most restricted, if you please, in its scope of justiciable disputes; trusting to the good faith of nations to observe their agreements, carefully entered into; and seeking in every country of the world, or certainly in every country a party to this agreement, to educate a public opinion which shall be so strong and so insistent, that the terms of a treaty limited in scope and limited in extent of time, subject to revision as experience shows, shall be observed throughout its existence, and that the disputes included in the categories of submission shall be submitted.

I know, in the ultimate result, no power stronger than the power of public opinion. The framers of our Declaration of Independence spoke of the decent respect to the opinions of mankind, and the decent respect to the opinions of mankind which they observed is still a force in the world, and I believe that the issue of every White Book, Orange Book, Yellow Book and every other colored book issued by the foreign offices of the different countries, is a tribute, is an appeal to this respect to the opinions of mankind, to secure by such submission an appreciation of the justness of its cause. And I believe that the respect of submission to the opinions of mankind is growing, is destined to grow, and, in the long result, is the one firm, although intangible, method of securing international agreements, just as the decent respect of the opinions of our neighbors is one of the greatest, if not the greatest, means of securing compliance with the moral and legal code, written or unwritten.

The CHAIRMAN. The last topic for the evening is "Is a uniform law of neutrality for all nations desirable or practicable? If so, what

are the principles upon which such a law should be based, and what generally should be its provisions?" which is to be discussed by Professor A. de Lapradelle, of the University of Paris, representing the American Society of International Law.

I suppose there has not been a day in the history of the American Republic from the day LaFayette placed his foot upon our soil, when a Frenchman was not welcome among us. There is not a heart in our country that does not go out in admiration and affection to France at this stern hour. We are very glad indeed to welcome to this platform Dr. de Lapradelle.

THE UNIFICATION OF THE LAWS OF NEUTRALITY*

ADDRESS OF A. DE LAPRADELLE,
Professor of International Law in the University of Paris

The lack of a sanction is not at the present moment the only imperfection in international law. Not only is it a grave matter that most definite conventions and the best established principles are in danger in the recent state of international relations of remaining pure formula, or scraps of paper, but it is a no less serious matter that on certain points even the content of international rules, apart from all questions of sanction, has not been recognized with certainty. That precision of juridical rules which is necessary for the security of juridical relations is still lacking in international law. Not that there are wanting in various countries very precise and clear rules on a certain number of problems, but these rules contradict each other and the more precise they are the more thoroughly are they in opposition to other rules. That is to say, international law is still in many respects in the purely national phase of its development. States determine it in a manner purely unilateral or individual, in laws, decrees, ordinances, and other acts which emanate from their sovereignty. They apply it either in their prize tribunals or in their national courts of justice. For want of a common legislative organ, or at least of a superior international jurisdiction, they are themselves both legislators and judges in questions in which, on the contrary, they ought to be subject to a legislator or a judge. Now the national legislator or judge has a natural tendency to shape international law according to

*This paper was delivered in French, and an English version supplied by the author.

the tendencies, conscious or unconscious, of particular national interests. When states find themselves in a condition of practical equality, in which consequently their interests appear to be identical (for example, in a matter concerning the status of diplomatic agents), the law tends to uniformity in spite of minor divergencies of detail. So there is no question easier to determine than that of diplomatic immunities, and custom here has sufficed to regulate the matter almost everywhere without appeal to conventions. But when it comes to questions in which states do not present an equality of conditions, neither geographic, economic or social, then different systems trace their divergent furrows in the field of international law. Instead of the rules in each state coinciding with the rules in all the other states and thus deepening the common furrow, we have several rules tending by their cross furrows to plough the field in all directions, crossing each other, branching out sideways, and interlaced in inextricable confusion. What kind of field will that be, and what harvest can it produce? Nevertheless, at the present moment that is actually the condition of international law. On every occasion when political interests are at stake the legislator and the judge interpret the rules of international law in such measure as they are able, in a sense conforming to a higher interest than that of international law, *viz.*, that of their own nation.

If, for example, it is a question of nationality, those states which have a large population and those which have but few can not possibly have the same point of view. The old countries try to keep their hold on their citizens abroad even after their naturalization, or even demand of their children born on foreign soil the old allegiance. The new countries try to assimilate the wholesome, enterprising and active elements which come from abroad, and to cut all the bonds, at least those of nationality, between the native state of the emigrant and the country which, because it gives him the opportunity to accumulate property and often to enjoy a new liberty, has the right to demand of him full and complete fidelity. Consequently there is no more difficult problem than that of the determination of a uniform law of nationality. The judge in arbitration may deduce this law from the principle that every man ought to be allowed freely to choose his country but to have only one country. However, the different nations hold so strongly to their divergent laws on this point, that often, after having inscribed them in their constitutions, they forbid any arbitrament upon them.

If it is a question, not of the building, but of the defense of a nation, a militarist state which has all its available population under arms in the regular army, according to its institution of compulsory military service, will not have the same ideas on the *levee en masse* as a nation, which having only a militia or a voluntary army, would have to count on the people suddenly summoned to arms. This explains why at the Congress of Brussels in 1874, and at the Hague Conference of 1907 the Powers found it impossible to fix in a definite convention the rights of populations of invaded territories.

Moreover, a nation which has only a merchant marine without a war fleet will naturally wish to preserve the right of privateering in order to protect its merchant marine, while a nation which has a powerful fleet, like England, will not hesitate to demand the suppression of this right, as England did in 1856.

To come to the problem which is occupying our attention at present, the problem of neutrality. Here a difference of geographical conditions determines different tendencies among the nations. An insular Power which has long since assured itself of havens of shelter on all the great maritime routes of the globe will naturally be inclined to believe that neutrals ought to shut their ports to belligerents; while, on the other hand, a nation which has no colonies, no ports of refuge, no coaling stations, will have the tendency to interpret the phrase, "the freedom of the seas," as carrying with it the hospitality of neutral ports. Again, a nation which in time of peace makes extensive military preparations naturally has all the necessary elements for the manufacture of arms and munitions and will have a tendency to believe that it is the duty of neutral nations to prohibit the exportation of arms and munitions to the profit of the belligerent; while a nation which, sincerely desirous of shunning war, gives its military budgets only a relative importance, will consider that such arms and munitions ought to be exported freely with only the risk of capture on the high seas as contraband of war.

These few examples are sufficient to show that even before meeting any obstacle inherent in the lack of sanction, international law meets a fundamental difficulty, *viz.*, a lack of certitude resulting from conflicting national conceptions, which themselves are the results of divergent interests. International law has been too long in respect to its most important points scarcely more than a loosely bound bundle of faggots of national laws. The time has come to substitute for

the nationalization of international law, which has persisted so long, a real internationalization. If the notion of the juridical equality of states is true, international law can not vary according to the private conception of the different states, that is to say, according to their unequal conditions, of population, wealth, and geographic situation. If it is true that law is above the subjects whom it rules, international law can not be the servant of any particular nation's ambitions, the auxiliary of its greed or the ally of its political or economic projects of leadership. It is not a mercenary ally which the states can take into their pay. It is the expression of the rule of justice and reason, and the expression law means a rule applicable equally to all the members of the society. The rule of law may, without doubt, be in accord sometimes with the interests of one and sometimes with the interests of another state, but it can in no wise be interpreted by one or the other in order to serve that particular interest. International law can be the expression of no other interests but the general and permanent interests of political life. It is the law which rules international society; the law, like the society, must be uniform.

Between the diverse conceptions of international law which confront us, we must then make our choice; for a diversity of rules can not be tolerated. If this diversity manifests itself in certain points, it is but a transitory manifestation, indicating that in the evolution of international society a transition is being made from an inferior to a superior rule under the influence of the progress of science and conscience. The uniformity of international law must not be confounded with its fixity. It may vary and develop in time, but at the same moment it can not admit variations in space.

Uniformity is desirable in international law at all points, but especially in the matter of neutrality. When two nations are at war it is, of course, impossible to hinder hostilities by the precision of international law, but when they are at peace, although threatened with the contagion of war by the near presence of the belligerent armies, there is still opportunity to escape the peril of the extension of war to their land through the careful enunciation of and strict obedience to international conventions. To allow divergence here is to prolong uncertainty and to open the field to quarrels, recriminations, friction and even conflicts between belligerents and neutrals. These conflicts are deplorable, first, because they lead naturally to war and so extend the circle of belligerents, when states which act

on the principles of justice and humanity ought to restrain the intensity and violence of war; and, secondly, because these conflicts deprive the neutral of the confidence of the belligerent, a confidence which might be useful both for them and for him to preserve intact, so that he might later be invested with the honorable privilege of aiding the belligerents to come to an agreement on the principles or even the terms of peace. The rules of neutrality ought to be made precise and uniform all the more as their lack of uniformity is calculated to provoke between belligerents and neutrals the conflict which the neutrals ought in principle first to prevent, then to stop as soon as the moment comes for a durable peace. A uniform law, then, on neutrality for all the nations is eminently desirable.

But if such a law is desirable, is it also practicable? Can one hope that in such questions all neutrals will come to accord with each other, and all the belligerents with the neutrals? This is a grave problem. There are certainly a number of points on which controversy is condemned in principle, but at the same time there are other points on which at the present moment a divergence of views seems established by principle. All the nations are of accord on the desirability of a single rule in the matter of contraband, of blockade, of continuous voyages and of visit and search. Just what this rule should be, is another question, but that it should be the same rule is agreed to by all. On the contrary, there are certain parts of the law of neutrality where divergence, although condemned in principle, is formally accepted and expressly recognized, each state being free to determine, according to the extent of its competence, following the exigencies of its conscience and the best regard for its interests, the rules of neutrality which apply to it. Liberty for the neutral himself to determine his duty of neutrality, is the principle announced by the conventions of The Hague of 1907 on the rights and duties of neutrals in land warfare (Convention 5) and in maritime warfare (Convention 13).

On the matter of maritime hospitality, we have two conflicting points of view—one insular, the other continental. According to the rules announced by Great Britain at the opening of the War of the Secession, ships of war were prohibited from remaining in neutral harbors for more than 24 hours, from coaling more than enough to supply their needs as far as the nearest harbor of their own nation, and from entering the same port again before the expiration of a period of three

months. Following up these restrictive measures still further, the celebrated proclamation of the Governor of Malta (of the 12th of August, 1904), and the opinion of the eminent English jurist Lawrence, did not hesitate to propose as the formula of a perfect international law, the complete prohibition of coaling, and the closure of neutral ports to belligerent vessels, even for the modest space of 24 hours. On the other hand, following the view of the continental nations, steadily developed by France throughout her history, and supported by Germany, Italy and Russia at the Hague Conference, the neutral state has the right to allow a belligerent vessel a sojourn of more than 24 hours in her ports, to take on coal without limit, to return to the port at pleasure, on the sole condition that the neutral waters are not made a base of naval operations.

Ideas of neutrality are not in accord, either, on the question of trade in arms and munitions of war. In the terms of Conventions 5 and 13 of The Hague (Oct. 18, 1907) we read: "A neutral Power is not obliged to prevent the exportation or the transit, for the use of one or another of the belligerents, of arms, munitions, and, in general, of whatever may be useful for army or fleet." On this question we find three different ideas confronting one another: one of them, to the effect that the duty of neutrals is to forbid absolutely the exportation of arms and munitions of war—an opinion developed by M. Kleen at the Institute of International Law in 1897; a second, to the effect that neutral states shall allow the belligerents free power to secure arms and munitions, subject to the ordinary conditions of commerce, without other provision than that the belligerents shall stand on a complete equality with each other in this respect; finally, a third opinion, to the effect that neutrals have full power either to prohibit or to permit the exportation or transit of arms and munitions for the benefit of one party or another of the belligerents. Examples of the exercise of national authority in accordance with one or another of the foregoing views may be presented as follows:

(1) In the Spanish-American War of 1898, Brazil, Denmark, and Portugal forbade the trade in arms, and at the beginning of the present war Brazil did the same.

(2) The United States, following their established tradition, give belligerents full liberty to come here and purchase arms, on the principle that such treatment is equal for all parties.

International law is uniform on this point, in that it allows every

state to determine for itself whether it will or will not export arms, whether it will or will not open its ports to ships of war of the enemy, whether it will or will not permit coaling; but the law varies greatly according to whether a nation makes use of this liberty or not. The contradiction can not be avoided. To leave a state the right to choose between two opposite rules is to invite it to pronounce which of these opposing rules is the better.

In the absence of a juridical obligation, has not a neutral state the moral obligation to exercise the choice which is open to it? Has it not the moral obligation to use its liberty in order to forbid trade in arms, to restrict the right of sojourn, and to deny the hospitality of its ports to belligerent vessels? The causes of embarrassment for neutrals and occasions of recrimination for belligerents are, then, not as yet removed by a uniform practice of international law. The present war offers us a striking example of this.

If a state does not establish a special ruling on the question of opening or closing its market for arms and ammunition, we presume that the market is open; but if it does not adopt a rule on the extent of the hospitality which it shall extend to belligerents, we presume that it favors a limited rather than an extensive hospitality, that is, that it favors the English rather than the Continental idea. This implies at bottom, the superiority of one of the two rules over the other: in the case of the sale of arms, the superiority of the rule of liberty; in the case of the hospitality of ports, the superiority of the rule of restriction.

Now, if, in case of doubt, one of the conflicting rules should be preferred to the other, it is because one is ethically superior to the other. In reality, both the rules are rules of compromise; but if the neutral nation seeks an ethical basis of justification, it can not have the liberty to choose between the two rules—one of which is ethically superior to the other. International morality ought not to vary, any more than national morality, to suit the advantage of one or another party. There must be a single rule. What shall this rule be?

To determine this we must first resist the illusion of a double mirage, —first the mirage of history, and second, the mirage of pacifism.

As to the first, it seems as though, throughout the course of the evolution of the laws of neutrality, there were a constant tendency to the restriction of the liberty of a neutral state. The neutral, who, at the close of the eighteenth century, could let a belligerent pass through

his territory, without violating the rules of neutrality, has been forbidden to do this since the beginning of the nineteenth century, and this revision of international right was solemnly registered in the Hague Convention of 1907. So, then, refusal tends constantly to replace permission: that is the law of history.

As to the mirage of pacifism, it seems as if any favor granted by a neutral to a belligerent, or even to all belligerents equally, were an encouragement of the extension of war itself, and consequently ought to be denied. Hence the prohibition to belligerents to use neutral ports, to procure coal, and the parallel prohibition to transform their money or their credit into arms and munitions of war in the market of neutral nations. The law of neutrality oscillates between two ideas: the sovereignty of the neutral state, and the limitation of that sovereignty in the name of a duty to humanity which forbids the neutral to do anything which may enlarge, encourage or even maintain the status of hostilities. If we follow these two ideas to their logical conclusion, we should arrive at these conclusions: that neutral ports ought to be entirely closed to belligerent ships of war (except in case of actual distress), and that the neutral market for arms and munitions ought to be completely shut to belligerents. Neither of these conclusions can be admitted. The first can not, because it would be contrary to the common interest of nations in the free use of the seas; the second, because it would be contrary to the principle of the freedom of international commerce, of which the free use of the seas is but the primary instance. But, furthermore, even from a point of view that is vigorously pacifistic, neither the one nor the other of these conclusions can be admitted. The first would lead nations of great military strength, which (owing to their recent consolidation) have not had the opportunity of securing maritime power through a long succession of generations, to trouble the world's peace in order to get by war or other forms of violence those territories which they think necessary for them to hold the sea in time of war. And, on the other hand, it would be contrary to peace to close the neutral market for arms to belligerents in time of war, for that would be to give a premium to the nations which, having desired war, have prepared for it with diligence. It would thus interfere with the limitation of armaments, which is rightly considered the first step in progress toward a more pacific status of the world.

History shows, without doubt, that the idea of neutrality has passed

from a more liberal to a more restricted interpretation; but there are limits to this evolution. No historical evolution can be indefinitely prolonged. It can not reach the limits indicated in its principles. Now the principle of the new evolution in respect to neutrality is this,—that the régime of necessity is being substituted for the régime of liberty. There should be less and less opportunity for nations to act in this matter according to their good pleasure. This is both in the interests of the belligerent—who before the opening of the war naturally wants to know what will be the rules of the game of war—and in the interests of the neutral—who, at the beginning or even at the threat of war, does not wish to be subjected to pressure from the belligerent to modify his rules of neutrality. Neutrality ceases to be a *right,* and becomes a *duty.* Its rules must not vary according to the states involved—hospitality accorded here and refused there, markets for arms closed here and opened there. A law which is not uniform is not a law. Undoubtedly the law will develop and change. Uniformity does not mean immobility. But until uniformity is attained, it is impossible to say that international law has come to its own.

In the circumstances in which we are at present placed, there are possible transactions and accommodations between divergent interests. But it is working on an unsound basis to refer differences in ethics and law between two systems to the free will of separate states. A neutrality which is still penetrated by the dogma of the independence of states is as yet only the possibility of accommodating contrary interests. The entire history of justice demonstrates the necessity for international law to repudiate this old dogma in order to accept the modern principle clearly deduced from the new conditions of international intercourse—as the hallowed and perpetual nature of man. The interdependence of states is only the juridical expression of the solidarity of man. For political progress among states, as well as for social progress among men, it is indispensable that this principle shall cease to be a vague and indeterminate makeshift, and become a consistent rule of action.

The CHAIRMAN. This paper concludes the address this evening, and I am sure it is the desire of all to express our gratitude for the three able papers to which we have listened.

The meeting stands adjourned.

FOURTH SESSION

Thursday, December 30, 1915, 10 o'clock a.m.

The meeting was called to order by Admiral John P. Merrell.

The CHAIRMAN. Gentlemen, the first paper this morning is by Dr. Judson, of the University of Chicago, to which I have no doubt we shall have great pleasure in listening.

WHAT MODIFICATIONS, IF ANY, SHOULD BE MADE IN THE LAW AND PRACTICE AS NOW APPLIED BY THE PRINCIPAL MARITIME NATIONS CONCERNING BLOCKADE AND CONTINUOUS VOYAGE IN ORDER, UNDER THE CONDITIONS OF THE MODERN INTERDEPENDENCE OF NATIONS, ADEQUATELY TO SAFEGUARD THE INTERESTS OF BOTH NEUTRALS AND BELLIGERENTS?

ADDRESS OF HARRY PRATT JUDSON,
President of the University of Chicago

Dr. JUDSON. Gentlemen, in the absence of the prize court, international in character, contemplated by the Second Hague Conference, during the present war all matters have come before the courts of the several belligerent nations. That has been the long-standing practice. I wish at the outset simply to call attention to the fact, well known, that these national prize courts administer not merely international law—I am inclined to say not primarily international law—but, it may also be, the municipal law of the state to which the court belongs.

In the case of the *Peterhoff*,[1] our Supreme Court called attention to the fact that in passing on certain questions in a way somewhat adverse to the interests of the United States, they were bound not by the national interests but by international law, which is very well so far as it went. But in point of fact I fancy that had there been a statute of Congress in the way of the rule of international law which they were

[1] 1866, 5 Wall., 28.

administering, they would have heeded the statute and not the rule in question.

In point of fact we find, I believe, that these courts administer, in their order of importance, three things: In the first place, they administer municipal law. If there is any municipal law or any national rule in the country in question, the court would administer that first. If international law gets in the way, so much the worse for international law. In the second place, they apply their own precedents, whether based on international practice or not. And thirdly, they administer the law of nations, which we call international law.

I speak of this at the outset, without dwelling on it as perhaps an obvious truism, but rather essential to some purposes.

I need not dwell upon the very well known history of the doctrine of continuous voyage except to point out that in its origin it was not, never has been, and is not now a rule of international law. In its origin it was simply a rule of the British authorities for their own interests.

Instances of such rules are common. The British prize courts of the Napoleonic wars enforced the Orders in Council proclaiming a blockade of the coasts of France and her allies. The Rule of the War of 1756 was a rule established by British political authority. They regarded, on the whole, the course of France in opening her colonial trade to any who would engage in it, as simply an evasion of the results of British supremacy in America, and therefore, something which Great Britain would not tolerate, and it was not tolerated. Not being adopted, however, by general consent of nations, it was not a rule binding on nations at all. When that was enforced by Sir William Scott, he was not enforcing a rule of international law but simply a British rule, and that was enforced constantly by British courts.

May I point out, in this connection, also the way in which it was enforced. We are aware of the device, the Yankee trick of a broken voyage, to evade condemnation by prize courts. Now, admitting the justifiability of condemning a direct trade between Santo Domingo and France, and admitting it could not be helped, the Yankee skipper would sail with his cargo from Santo Domingo to an American port, there break the voyage, and take out new clearance papers for France, on the ground it was two voyages.

Of course, very soon the British courts were able to cope with that, and in the well known decisions of Lord Stowell, we find his jurat

to be that the intent governed, that it was the intent of the American skipper, in getting the cargo in the West Indies, to carry that cargo to France, and that the breaking of the voyage in the United States was simply a device, and did not in any way affect the real intent; therefore, the voyage was one voyage and not two voyages, and hence was illegal—reasoning which appears to me to be wholly sound so far as the unity of the voyage is concerned. As to whether the voyage is illegal or not, is another question. It is illegal from the point of view of English law, not international law.

When the American Civil War came along, our courts took occasion to apply the same principles of continuous voyage in cases of blockade and contraband. The principles did not differ, but the difference lies simply as to the part of the voyage of which the court took cognizance. In Lord Stowell's application of the principles, cognizance was taken of the second part of the voyage, and with good reason. It was entirely impossible to know, on the first part of the voyage, whether a cargo of sugar from Santo Domingo was or was not intended for American use. There is no reason in the world why it should not be supposed that the cargo was *bona fide* intended for the United States; hence, there existed no adequate reason for condemnation in the first part of the voyage. Therefore, those cases arose during the second part only of the broken voyage.

In our Civil War cases, as you will remember, these conditions were exactly reversed, for a vessel to be taken in the second part of the voyage, Nassau to Charleston, a ship could be condemned only for the evasion of blockade. In order to evade danger of capture during the long voyage across the Atlantic, the custom was for British shippers to consign their goods to some neutral port in the West Indies. One favored port was Nassau, and cargo after cargo was sent to Nassau, containing to a large extent contraband, and many other commodities also, with the intent that it should be transshipped when circumstances warranted into some blockade-running vessel, in order to evade the blockade at Charleston, Wilmington or Savannah, as the case might be.

It was in the first part of the voyage, then, that our courts took occasion to consider the question of the continuous voyage. You will notice that they held, in the first place, that the question was a question of cargo, and not of ship. In the second place, the facts warranted the inference that it was the intent to transship these cargoes to

a blockaded port; therefore, the entire voyage of that cargo was one voyage and not two, and the goods should be condemned as being really bound to a blockaded port.

You will remember the very sharp criticism that accompanied this decision, especially in the case of the *Springbok*,[2] where a large part of the goods were held to be not contraband at all. I fancy that the chorus of criticism in Europe, and in England, too, for that matter, was almost unanimous in condemnation of the view of our court.

And yet I would point out that exception was not taken to this by the British Government, and when the matter came to an issue before the Claims Commission under the Treaty of Washington, that court, consisting of three men, one American, one Englishman and one Italian, unanimously decided against the claimants, and it seems to me that, on the whole, the court can be justifiably sustained in its decision.

The criticism was on various grounds. One was that the British and American rule of liability to capture anywhere on the high seas of a vessel sailing with intent to evade the blockade was in every respect wrong. There, again, I suppose that the court was deciding on the basis of American and British precedents, and not on a universal rule of international law, because, as we all understand, the question of at what time a ship sailing with intent to evade a blockade is liable to capture, is a question on which there is not universal agreement, and on which therefore there is not an established rule of international law. The English and American practice has been to regard a ship as liable to capture from the moment it leaves its home port, anywhere on the high seas; other views holding that it should not be so liable until it actually attempts to pass the blockading squadron. So I say that there is not an established rule, but simply a practice of different nations in a different way, and our courts enforce the British and American practice.

Another ground, however, was that the condemnation was based upon suspicion that it was intended to transship the cargo to a blockade-runner. The Maritime Prize Commission appointed by the Institute of International Law unanimously gave an opinion adverse to the decision of the Supreme Court in the case of the *Springbok*, of which the following is a part:

> The result would be that as regards blockade every neutral port to which a neutral vessel might be carrying a neutral cargo would

[2] 1866, 5 Wall., 1.

> become constructively a blockaded port, if there were the slightest ground for suspecting that the cargo, after being unladen in such neutral port, was intended to be forwarded in some other vessel to some port actually blockaded.

Then a French critic, writing eloquently in 1883 (Desjardins, 59 *Revue des deux mondes*, 218, 223–225) says:

> This doctrine was pushed by the Supreme Court of the United States so as to make it sustain the seizure of a vessel between the port of original departure and the intermediate neutral port, and this on the conjecture of an ulterior adventure being projected for the goods in question from such intermediate neutral port to a blockaded port.[3]

In point of fact, the decision of the court in the *Springbok* case, and in other similar cases, was not based on "suspicion" or "conjecture"; it was based on evidence such as to lead to the overwhelming conclusion that the intent of the voyage was to send the cargo to a blockaded port of the Confederate States.

It is needless to dwell on the well-known facts of the situation as to Nassau, a little West Indies port, with virtually no trade, not visited except by a mail steamer, I suppose, three times a week. Suddenly its commercial conditions rise to a magnitude that make it one of the great seaports of the world, commerce pouring into it in immense quantities. Under these circumstances it was as reasonable to suppose that that commerce was intended for consumption in the Bahama Islands as to suppose that the owner of a peanut stand in Washington would make a contract for $1,000,000 worth of steel ingots. The thing was absurd. The evidence was conclusive and overwhelming that these goods were meant for the Confederate States, and meant to evade a blockade at some point.

Another exception taken to the decision was on the ground that the particular blockaded port to which it was supposed these goods were intended to be conveyed, was not named. As Desjardins puts it:

> If owners of neutral vessels renounced a lucrative neutral carrying trade out of fear of being seized, as the *Springbok* was, on suspicion of being engaged in "a continuous voyage" to some

[3]Moore, Int. Law Dig., Vol. VII, p. 734.

undefined blockaded port, what would become of maritime international trade?[4]

The difficulty with that contention is that every Confederate port was actually and effectively blockaded at that time. So it was wholly immaterial which one of these ports it was intended to make the terminus of the blockade-running adventure. There was no reasonable doubt that the cargo of the *Springbok,* like that of the *Bermuda,* the *Stephen Hart,* and other captured vessels, was purchased in England and was embarked on these vessels with the sole purpose of transmission to the Confederate States through some blockaded port.

Under these circumstances it seems to me that the contention of those who object to the decision amounts to a mere legal quibble for facilitating blockade-running. Of course, as I said before, we must admit that this decision of our courts is based on an English precedent, and that English precedent is based on English Orders in Council, and neither one nor the other was a principle of general international law, and could not be because there was no international agreement on these heads at that time, and there is not now, for that matter.

The third step in the development of the doctrine of continuous voyage applies to contraband and not to blockade, and to the transportation of such contraband to a belligerent through a neutral country.

These questions arose during the British war in South Africa, with regard to contraband supposed to be shipped across Portuguese East Africa a very short distance to the Transvaal. They have arisen in much greater magnitude during the present war relative to the transportation of contraband to Germany from a neutral port nearby, for instance, from Rotterdam.

The British Government has taken the ground that when the evidence is conclusive, to their minds, that a cargo is shipped, not with the intent of being merged in the general mass of property of the neutral state to which the point of destination belongs, but with the obvious intent of being transshipped bodily through a short distance into the other belligerent country, then the intent must rule, and the cargo therefore be subject to condemnation.

It is very advantageous to a belligerent to obtain contraband of war through a neighboring neutral state without interference on the high

[4]Moore, *ibid.*, p. 738.

seas. If Rotterdam were a German port it would, under present conditions, be blockaded and such shipments would be prevented. Being a neutral port, if the principle of continuous voyage is not applicable, it becomes to all intents and purposes a port of a belligerent, but exempted from any of the disabilities of a belligerent.

It is not easy for me to see that there is any valid distinction between the transshipment of contraband from Nassau to Charleston, as in the case, for instance, of the *Bermuda,* on the one hand, and, on the other hand, the transshipment of contraband from Rotterdam to Germany. The fact that in one case it is to be carried by water and in the other case by land, does not seem to me to be material.

It is quite true that this doctrine, as laid down by the United States Supreme Court, was not recognized by Sir William Scott under apparently similar circumstances. But in point of fact, however, the revolution in modern business and in modern modes of transportation has made the circumstances of the present time strikingly dissimilar from those existing a century or more ago.

The exigencies of the case in the doctrine of continuous voyage as applied today by the British Orders in Council by British prize courts, it seems to me, are on all fours with the circumstances in 1861–5. Therefore, whatever we may feel about the doctrine as a rule of international law, it seems to me clear that the United States is estopped from complaining. The question of what may or may not be regarded as contraband, and of how far the rule of continuous voyage should apply to conditional contraband, is another matter with which this present discussion is not concerned. It seems to me, in short, that based on the principles of contraband and blockade maintained by Great Britain and the United States, the rule of continuous voyage as interpreted by the Supreme Court of the United States, and by the present policy of Great Britain, which is substantially the same, is reasonable and logical.

It is hardly worth while to dwell on the question of blockade in the present war. It is hard to tell whether there is a blockade or not. The British Orders in Council, I believe, do not mention a blockade, although the British correspondents of our State Department apparently seem to regard their case as a virtual blockade; but certainly it has not been a blockade by proclamation, and the ordinary rules of blockade have not been applied.

Now, what are the most pressing needs, so far as the future development of international law is concerned? I think there are two.

The first need is, not that any one rule should be adopted as a rule of international law, but that some rule should be adopted by all nations, on which all nations can agree. Instead of leaving these matters, in short, to national precedents, to national dictates and to the decisions of national courts, there should be some rules of international law on which there should be agreement that would make them international law which could be enforced alike by all courts. Such a course may or may not result in the adoption of the doctrine of continuous voyage. It might result in the adoption of some such doctrine as was embodied in the Declaration of London, which failed of final approval. A uniformity of practice and a clarity of definition that ought to be embodied in the agreement so that we may know without any reasonable doubt whether in a given case the law is being observed or is being violated.

In the second place, there ought to be some kind of sanction found for the rules which may be adopted. What that sanction is or can be I am not prepared to say. It is not so very long ago, that, when we were teaching international law and when asked by our students, "What is the sanction of a body of rules which have no physical force apparently back of them," we were able and willing to say that that sanction is found in a sense of honor on the part of separate nations, in a sense of heeding the decent respect for the opinions of mankind; it is found in a public sentiment throughout the world. I wish I could say the same things to my classes today. But the experience of the last year or two convinces me at least that those considerations have not the weight of a farthing. All nations are bound by their own immediate, countervailing interests, and they disregard any of these rules that get in their way, merely because they get in the way of what they believe to be their interests.

Unless we can find some sanction which will make it necessary for nations to obey the rules on which nations all agree as rules of international law, then international law hardly exists. And if that is the case, then institutes of international law and societies of international law, like this, will simply become mere aggregations of more or less agreeable gentlemen who are engaged in the active but entirely futile process of consuming language.

The CHAIRMAN. Gentlemen, the next paper this morning is by Professor Butte, whom we will all be very glad to hear.

Prof. BUTTE. Mr. Chairman and gentlemen: Let me say informally at the outset, that after some study I do not find there are any sufficiently broad or fundamental modifications of the law of visit and search that I care to recommend. So I shall confine my paper to a discussion of the reform of the law of contraband.

THE REFORM OF THE LAW OF CONTRABAND

ADDRESS OF GEORGE C. BUTTE,
Professor of International Law in the University of Texas

By way of introduction, let us note why the problem of contraband has been so perplex and why modification and progress have been and will continue to be so difficult. First, there is the everlastingly rasping conflict of interest between neutrals and belligerents. The two are supposed to stand at opposite poles. The belligerent believes—erroneously, I think,—that his interests are best conserved by prohibiting all commerce of whatsoever character between his enemy and neutrals; and the neutral believes, likewise erroneously, that the war ought not to affect his trade at all. Of course, neither of these maxima is in practice attained. But with each new war the same general issue arises, and neutrals and belligerents, like the heroes in Valhalla, "hew each other in pieces only in a twinkling to be reunited for other bloodless and indecisive contests."

Again, maritime Powers generally are reluctant to define precisely and formulate legally the relations of neutrals and belligerents lest in particular cases or by accidental circumstances *summum jus* is transformed into *summa injuria*, to the disadvantage and peril of one belligerent and a corresponding gain to his opponent. Lawrence gives us a striking instance of it in his account of how the neutral states furnished the Russian fleet with coal all the way from the Baltic to the Far East to the imminent danger of Japan; whereas Japan, though as a matter of right the same courtesy would have been extended her, had no intention of sending cruisers to the Baltic. Maritime Powers are far-sighted. Even when neutral they keep ever in view the possibility of their becoming belligerents, as may be seen throughout their discussion of the proposed International Court of Prize. They

find it all in all to their best interest, from this twofold viewpoint, to keep the law of maritime warfare in general and the subject of contraband in particular very elastic. Indeed, the rapid economic changes in our era and the amazing advances in invention and in the modes of warfare make a rigid codification of the law of contraband almost impracticable.

The situation is rendered still more hopeless in the light of recent painful manifestations of the doctrine of *necessitas belli, (Kriegsräson)*. Given vagueness and uncertainty in the law of war, and the doctrine of necessity, the belligerents find their warrant to do almost anything. Nay, more, given the most complete and perfect codification of the law of war by international treaty, and the doctrine of necessity; the result is the same. This doctrine is nothing new in our science. Grotius stated the principle: *omnia licere in bello, quae necessaria sunt ad finem belli;* and it has since received the support of eminent authority and the sanction of practice by many nations. It is often asked *arguendo:* In the face of the stern realities of naval war, in the face of relentless forces, in a death struggle, which will a nation consult to save itself, the necessities of its situation or the printed rules? War is not a sport. *Recht ist was gilt,* says Niemeyer. Rules for the conduct of war agreed upon in time of peace are essentially merely proposals to future unknown belligerents. Have not the instances of the ruthless violations of the rights of neutrals during the present war borne out that this is the construction in fact accepted and followed? Is it or is it not next to futile to attempt to tie the hands of belligerents by a written rule, when the hope of victory is thereby put in the balance against the observance of the rule and the advantage of the enemy? *The law of war is made by and during war.* Failure to appreciate this fact and the want of coöperation among neutrals during war has resulted in this: *the law of war is enacted by belligerents.* Is it not high time neutrals were claiming a more effective part in the matter?

Another factor that has impeded reform of the law of contraband is the overwhelming naval supremacy of a single nation. Great Britain potentially rules the seas. No modification of the law of maritime warfare by international convention can be made without her consent. This is demonstrated beyond a cavil by the fate and failure of both the International Prize Court Convention and the Declaration of London, not to mention other similar beneficent conventions. She will give her consent to naval reforms only when she finds it to her

interest, or when she is coerced (of which there is no immediate prospect). These are obvious facts and the statement of them here is not meant as a criticism in the slightest degree; doubtless no other nation similarly situated would act differently. But these facts must be taken into account; otherwise our discussion this morning would be Utopian and fruitless.

What Barboux declared forty years ago is still true: *"Qui oserait considérer comme un principe de droit maritime un usage auquel l'Angleterre refuserait de se conformer?"*

An examination of the decisions of the British prize courts will disclose that "they have with rare exceptions proceeded in the direction of extending the list of contraband to its widest possible limits" in step with the rise of England's naval power. When that power was not so formidable, we find Sir Leoline Jenkins refusing to recognize the contraband character of tar and pitch and declaring that only "what is directly and immediately subservient to the uses of war ought to be regarded as contraband." "A century later," in the language of Atherly-Jones, "when the naval power of England had again become formidable, we find pitch, tar, hemp, sails, sailcloth, masts, copper, sheathing, anchors and practically every article of ships' equipment adjudged to fall within the category of absolute contraband." "The policy of the English Court of Admiralty," says Atherly-Jones, "has been in the direction of extending the rights of belligerents rather than in that of protecting the rights of neutrals." Gentlemen, all law is a restriction upon liberty of action, and it is not to be presumed that Great Britain, so long as she retains her great naval supremacy, will desire to curtail considerably her liberty of action on the sea during war to the incidental advantage of her foe. The abuse in the present war of the power conferred by that naval supremacy (under the pretense of retaliation) against which the United States so tardily but so vigorously protested in October last, ought to be illuminating to those who expect Great Britain to lead (as she must, if anything at all is accomplished) in the adoption of any important changes for the better in the law of maritime warfare.

The prospect of any essential reform is dark. It is almost hopeless, as I now reluctantly see it, if we work only along the same lines as heretofore. We must take a new tack.

I. For the purpose of this discussion, which will not, necessarily, indeed can not, concern itself with details, we shall assume that the Dec-

laration of London, Chapter II, Articles 22–44, states substantially the accepted principles of international law and practice relating to contraband of war.[1] The leading Powers now at war profess to follow it, with some modifications which apply chiefly to the list of articles enumerated as contraband. Parenthetically let me remind you that the so-called analogues of contraband, military persons and dispatches, are quite properly omitted from the chapter on contraband in the Declaration of London and treated separately as *L'Assistance Hostile* (Unneutral Service). They will, therefore, not be embraced in our discussion. Let it also be recalled that the program of the Naval Conference of London contemplated only the statement of principles of international law then generally accepted, and not the enactment of modifications or reforms.

II. Three vital modifications of the law of contraband have been proposed in recent years: (1) the abolition of the principle of contraband *in toto;* (2) the abolition of conditional contraband only; (3) an international agreement for the prohibition by neutral states of the export of contraband from their territory. The agitation for the immunity of all property from maritime capture has always excepted contraband, so that this reform is not relevant to our discussion.

1. The abolition of the principle of contraband *in toto* was advocated by the British delegation in the sessions of the Fourth Committee of the Second Peace Conference at The Hague, July 24, 26, 31, 1907. At the opening of the Conference, the British submitted the following declaration:

> In order to diminish the difficulties encountered by neutral commerce in time of war, the Government of H. B. M. is prepared to abandon the principle of contraband in case of war between the Powers which may sign a convention to that effect. The right of visit would be exercised only in order to ascertain the neutral character of the merchantman.

In support of this declaration an array of arguments was used which are more significant of the present deplorable condition of things than convincing of any real merit in the proposal. As summarized by Westlake they were:

---

[1]For these articles, see SUPPLEMENT to the AMERICAN JOURNAL OF INTERNATIONAL LAW, Vol. III, pp. 197–207.

> That profound doctrinal and practical differences exist as to contraband, especially as to the treatment of things which are not absolute contraband in the strictest sense, and that a codification of the law was hopeless—that the progress of science has increased the number of things which in certain circumstances are of use in war though not absolute contraband in the strictest sense—that the complaints of neutrals on account of interference with the trade in things of that class have consequently increased—that the complexity of the cargoes carried by modern merchantmen of large size makes the search in them for contraband goods difficult and vexatious—that further difficulties would arise if a ship accused of carrying contraband was allowed to proceed on her voyage, the alleged contraband being transshipped or destroyed—that the destination of contraband to the enemy is often difficult of proof, and that under the doctrine of continuous voyage a belligerent might almost entirely interrupt neutral commerce—that for all these reasons the principle of contraband is the source of great damage to trade in non-contraband goods, and that neutrals demand indemnities so large that prize courts refuse them—that during the Russo-Japanese War only the tact of the parties concerned prevented serious international results arising from the principle of contraband—that belligerents derive no compensating benefit from that principle—and that to abandon it would be a work of peace and justice.

If these arguments appear superficial and opportunist, Kleen in his *Lois et Usages de la Neutralité* (1898), in advocating a reform identical with the British declaration argues more from principle. A belligerent, he assumes can not under present law extend his defense against the traffic in contraband to the territory, to the soil of neutrals, nor interfere in any way within a neutral state in the production, sale or transport therein of any articles of commerce, for that would be a violation of the sovereignty of the neutral state. The same reasoning, he argues, applies to articles on board a neutral ship flying the neutral flag, for a ship is but a *portion flottante* of the state whose flag it flies. *"Une marchandise transportée par un navire se trouve, au point de vue du droit international, dans les frontières de l'Etat pacifique auquel ce navire appartient, et où sa qualité de contrebande ne signifie, selon le système qui règne, encore rien."* Hence, no such goods, whatever their character, are contraband until they are actually delivered into the hands of the enemy. To prevent such delivery, Kleen leaves the belligerent the right of blockade.

Neither Kleen nor the proponents of the British declaration mention

what seems to me the main point, namely, the inherently illicit nature of the traffic in contraband from the standpoint of the neutral's obligation, and its inherently dangerous nature from the standpoint of the belligerent's vital interests. Kleen would compensate the belligerent for the deprivation of his present means of suppressing the traffic in contraband by imposing on all neutral states the duty of prohibiting the export of contraband. Neither did the advocates of the British declaration mean that a belligerent must forego all rights to prevent the transport and delivery of contraband to his opponent. They had in mind as a substitute for the present system the permission to belligerents to appropriate to their own use any intercepted articles they deemed proper, subject to the obligation of making reasonable compensation; in short, the right of preëmption. The same plan is to be found in Article XIII of the famous treaty of 1785 between the United States and Prussia. By this plan the penalty of confiscation for an *illegitimate commerce which ought to be suppressed*, would be repealed; and the way opened, it seems to me, to an unlimited interference with all legitimate commerce, which needs to be more effectually protected. The British proposal failed in the Hague Conference owing to the nonconcurrence of the United States, France, Germany and Russia.

2. The abolition of conditional contraband is recommended in Article IV, paragraph 12, of the *avant-projet* adopted by the Institute of International Law at Venice in 1896. The abolition should extend to all that "pretended contraband" denominated *relative, i. e.,* articles *usus ancipitis,* capable of being used by a belligerent for military purposes but ordinarily only used for peaceful purposes; and also the so-called occasional contraband (*contrabande accidentelle*), *i. e.,* articles serviceable in military operations only in very exceptional circumstances. As a qualification of the abolition of conditional contraband, the plan of the Institute reserves to the belligerents the right of preëmption. The remedy is worse than the malady. The excessive interference with innocent neutral commerce sure to follow from the legalized exercise of this right, and the uncertainty as to what is a reasonable compensation for goods appropriated and when and how it will be paid and the probability of litigation and delay, offset any advantages of the plan.

In the Second Peace Conference, the United States formally declared that it was in favor of the complete abolition of conditional

contraband, but no action was taken thereon. Proposals to the same effect were contained in the preliminary memoranda of Austria-Hungary, Spain and The Netherlands in the London Naval Conference. When the delegate of The Netherlands, Admiral Roell, in the second session of the Conference on December 7, 1908, offered an amendment looking to the elimination of conditional contraband from the *bases de discussion,* it was soon manifest that there was no hope of its acceptance. The Declaration of London not only perpetuated the institution but extended it.

As long as the belligerents retain the power to decide in the first and last instance what is liable to confiscation as contraband, the distinction between various classes of goods has little practical value. Of course, it leaves the neutral the possibility of proving to the satisfaction of the belligerent's prize courts that his goods were innocent conditional contraband, and of obtaining reimbursement for their value at the end of a long and expensive litigation. But even that is for *him* always a losing game. For the *belligerent,* conditional contraband is an endless source of confusion and controversy. He will always resolve the doubts as to whether the goods in question are prohibited or not, in his own favor anyway; then why not in candor at once declare all questionable goods as absolutely prohibited? A stroke of the pen will suffice. Why hold out false hopes to neutral merchant traders? Conditional contraband is a sham concession. Certain articles are always contraband and certain articles are never contraband, and all other articles are contraband in the discretion of the belligerents. Conditional contraband is a fictitious classification,—a mere play upon words without content or meaning. It ought to be dropped. But whether it is or not does not make much difference. To abolish it is merely abandoning a name. The only free commerce belligerents should allow and neutrals should demand is the commerce in articles that are never contraband. If I read the signs of the times aright, that is what we will come to. The free list is the only list that should appear in any future international naval convention as to the law of contraband.

3. An international convention for the prohibition by neutral states of the traffic in contraband by their subjects has been suggested by a number of publicists and agitated occasionally in the public press, but so far as I know the suggestion has not been officially advanced or supported by any state in recent years. The principle of it is sound and

right. But such a prohibition is now rare in national legislation and it seems impracticable to attain this reform through international convention. Article 7 of Convention XIII of the Second Peace Conference, which has been ratified by twenty-five nations, states the present international law on this subject:

> A neutral power is not *bound* to prevent the export or transit for the use of either belligerent, of arms, ammunition, or, in general, of anything which could be of use to an army or fleet.

The matter is thus left optional with the neutral states. To get the whole community of nations to about-face on this point and make the enactment of prohibitory statutes obligatory is next to impossible, though some states, instructed by current experience, have doubtless suffered a change of heart on this issue. After the outbreak of the Franco-Prussian War, the Prussian Minister in London demanded that Great Britain should intercept and prohibit the shipment of arms to France by British subjects. Commenting on this, Westlake in 1870 expressed the opinion that "the only means of escaping this difficulty is to set up a list of articles of contraband by a general convention adopted at the same time as the rule prohibiting the export thereof by neutral subjects." But he had no hope of any international agreement either as to the definition of contraband or as to joint coöperation in prohibiting traffic therein. Kleen, in 1893, in a series of articles in the *Revue de droit international et de législation comparée* (Vol. XXV), and again in 1894 in the Paris meeting of the Institute of International Law suggested the same idea. He proposed a universal international treaty which should establish a list of articles of contraband (subject to change only by a similar treaty) and which should bind neutral states to prohibit by identical statutes the export of the articles of contraband thus determined. As we have seen, there is no reasonable prospect of the early adoption of such a proposal. But is there *nothing* that can be done along this line of reform?

III. Gentlemen, I venture to recommend the enactment by all nations, or as many as will, of such prohibitory statutes, without previous international agreement, as a matter of individual action. This plan presupposes concerted and similar action, but not an international treaty nor necessarily identical statutes. Each nation determines for itself what articles are contraband and prohibits the sale and the export thereof by sea and land. Of course, articles always contraband, such

as arms and munitions of war and other articles directly useful in battles, will appear on all the lists. The lists might well be left elastic so that they may, if desired, expand to conform to the lists of the belligerents. What more effective remedy can be found for the suppression of this illicit traffic, with all its train of evils, than that of *stoppage at the source?* Let us examine what may be said for the proposal that neutral states should prohibit the export of contraband to the belligerents.

1. It is right. The highly artificial distinction now drawn between the duty of the state, as such, not to furnish a belligerent with munitions of war or other contraband, and the absence of any such duty on the part of all its citizens, is a hybrid of very recent origin. It is one of the very few unhealthy products of the modern interdependence of states. That this distinction between the duty of the people and the duty of the state has become more firmly established since the rise of democracies and the increasing identification of the people with the state is one of the anomalies of history.

If we go back before the period of the expansion of modern overseas commerce, we never find in the definitions of neutrality *one kind for a state and another kind for the body of its citizens.* So, for example, Bynkershoek tells us in general terms: "*Optimo jure interdictum est ne quid eorum (contraband) hostibus subministramus; quia his rebus nos ipsi quodammodo videremur amicis nostris bellum facere*" (Quaes. Juris Pub. L. I. C. 9). Grotius (L. III. 5—2, *De Jure belli ac Pacis*) and Gentilis (L. III. C. 22, *De Jure Belli*) both tell us that the citizen of a neutral state who furnishes contraband to the enemy is *to be deemed an enemy.* "He is a member of the enemy's army who supplies to that army the necessaries of war," *i. e.,* whether he be king or subject (Gentilis). "He who furnishes to an enemy articles of the first class (absolute contraband) is a direct partaker in that enemy's war" (Grotius). Gentilis discusses the liability of neutral states for the acts of their citizens in thus violating the rules of international law. He comes to the conclusion that a neutral state, *as such,* can not be held to be primarily guilty of any offense; but it owes the injured belligerent the duty of extraditing the guilty individuals or punishing them itself. To refuse to do this is to be guilty itself of a breach of international faith (*laedi publicum foedus, si expresse neget universitas laesis satisfacere*). He goes further and maintains that the neutral state itself is directly and immediately re-

sponsible *pro delictis civium non momentaneis, sed successivis continuitatis* (*i. e.*, for the *continual* export of contraband by its citizens to the enemy), *si et scivit et potuit prohibere* (if it knew of it and could have prevented it).

As maritime commerce increased it became apparent that it was impracticable and harsh for belligerents to treat as enemies the officers and crews of neutral merchantmen that happened to be transporting contraband as a portion, however small, of their cargo. Neutrals, too, especially the Dutch, in the course of the seventeenth century, were demanding a greater liberation of commerce. Some were asserting that the freedom of the seas extended to the right of unrestricted commerce in everything, even including contraband. The result was that only confiscation was retained as the penalty for the transport of contraband by neutrals, and the right to treat the guilty individuals as public enemies was abandoned in the course of the seventeenth century. But this change did not alter the opinion of the civilized world as to the viciousness of the traffic in contraband and its essentially unneutral character, as is demonstrated by the large number of treaties concluded during this period for the suppression of the traffic. In these treaties each contracting nation expressly agrees to prohibit its subjects from transporting or furnishing contraband wares to the enemy of the other party during war. A partial list of these treaties is as follows: 1604, Great Britain and Spain; Great Britain, Spain and Burgundy; 1614, Sweden and The Netherlands; 1625, Great Britain and The Netherlands; 1654, Great Britain and the United Provinces; 1656, Great Britain and Sweden; 1670, Great Britain and Denmark; 1691, Great Britain and Sweden.

In the eighteenth century treaties imposing this duty on neutral states are rare, and in the nineteenth century they have disappeared entirely.

The disappearance of these treaties evidences the change that seems to have taken place in the conscience of the civilized world as to the inherent wrong of the traffic in contraband by the subjects of neutral states. We still find, however, lingering traces of the older and truer conception of the neutral state's duty to frown down upon this traffic. In the British neutrality proclamations, as late as the one of April 3, 1877, the sovereign warns his "loving subjects that if any of them shall presume in *contempt of this our Royal Proclamation and of our high displeasure,* to do any acts in derogation of *their duty*

as subjects of a neutral Sovereign—as more especially by carrying officers, soldiers, dispatches, arms, ammunition, military stores and materials, *or any article deemed to be contraband of war* according to the law or modern usage of nations," the offender will incur the penalties of international law and *"our high displeasure by such conduct."* The illegality of such acts is here denounced, but no steps are taken in the British laws to prevent or punish them. The more recent British neutrality proclamations (as, for example, the one issued in 1911 at the outbreak of the Turco-Italian War) omit all reference to "our high displeasure" and to the illegality of the traffic in contraband.

Fortunately, however, not all neutral states content themselves with warning their subjects against the existing penalties of the law of nations for carrying on a "lawful" business. Many states in recent years have, from different motives, prohibited the export of contraband from their territory during war. During the Crimean War, Prussia enacted such a prohibition; during the Franco-Prussian War, Austria-Hungary, Belgium, Denmark, Japan, The Netherlands, Spain, Sweden, Italy; during the Spanish-American War, Brazil, (what a noble example our American sister has been to the world in her legislation as to war!) Denmark, Japan, The Netherlands and Portugal. On April 22, 1898, the United States enacted a law authorizing the President to prohibit "the export of coal or other material used in war" which continued in effect until repealed by implication by the Act of March 14, 1912. This power vested in the President was exercised on October 14, 1905, when President Roosevelt prohibited the export of arms and munitions of war to the Republic of Santo Domingo. During the present great conflict, every neutral nation of Europe has prohibited the export of contraband, most of them to a sweeping extent.[2] The tendency is now to make the enactment of such prohibitory acts a matter of individual action. Our plan would leave it so. But we would have the prohibition adopted as a fixed policy by permanent legislation.

By present international law and practice, as usually stated, the sale or export of contraband is unlawful only (1) when made by the public

[2]Besides these instances, Prussia in 1863 prohibited the export of arms and munitions into Poland during the revolution there; France, under the law of July 14, 1860, put an embargo on arms in 1873, 1875, 1876 during the Carlist uprisings in Spain; the United States on March 14, 1912, enacted a law authorizing the President to prohibit the export of arms to American revolutionary governments.

authorities of a state professedly neutral, (2) when the individual citizens of a neutral state refuse to furnish the same aid to both belligerents on the same terms.[3] (3) When a national law is thereby violated.

We have gone somewhat into history in order to show that we have broken away in practice from an older and juster conception of the inherently hostile and wrongful nature of the act of professedly neutral citizens who furnish arms or other contraband to either or both of the belligerents. But if this notion no longer governs in modern practice, it has nevertheless still its ardent supporters in the science of international law. Among those who believe it right in principle for neutral states to prohibit the export of contraband may be mentioned at random Field, Gessner, Woolsey, Phillimore, Cussy, Hautefeuille, Pistoye, Duverdy, Brusa, Kleen and Bluntschli. *Contra,* Lampredi, Vattel, von Martens, Heilborn, Pradier Fodéré, Klüber, Twiss, Westlake, Perels and von Bar. A great many authorities express no opinion upon the subject as *lex ferenda,* confining themselves to *lex lata.*

Gentlemen, the essence of neutrality, whether of the state or of its citizens, is indifference. The whole duty of a neutral is neither to aid nor to hinder either or both of the belligerents. Can the state (which is after all only a concept) be neutral and its members be unneutral? Should any state professedly neutral tolerate acts of a hostile nature on the part of its citizens toward either or both of the belligerents? Right reason says emphatically, "No." In fact, *most* hostile acts are *now* prohibited by national law. Why not the traffic in contraband? Westlake wrote in 1870 that the truest test of neutrality consisted in *"ne point se departir pendant la guerre des habitudes contractées pendant la paix."* This is an impossible ideal so far as the belligerent is concerned; and the violent change in his condition makes it impossible for the neutral to continue with him *"les habitudes contractées pendant la paix."* However, the application of this test would require the enactment of a law confining the trade in wares made contraband by war to the dimensions of the trade in such articles in time of peace. Such a law would be utterly impracticable. Westlake, further arguing against the enactment of a law prohibiting the export of contraband, supposes this case: that an unarmed man is attacked by an armed man

[3] *Cf.* the statement of Chief Justice Chase in the case of the *Bermuda,* 3 Wall., 514.

before the shop of an arms merchant. If the merchant is willing to sell arms to others, but refuses to sell to the unarmed man until the fight is over, or to lend him any assistance against his aggressor, I believe, says Westlake, he would hardly be deemed to be a neutral; especially if five minutes before he had sold the aggressor the weapon with which he made the attack. But suppose the fight occurred before the shop of a baker, and the baker furnished a gun to the unarmed man, we should say that the baker took sides in the fight. Westlake adds, "I am far from supposing, however, that the legal conditions of neutrality between nations can be put on the same footing." He spares us the necessity of combating any deductions that might be made from the case. Is not Lord Grenville's analogy a truer one? "If," said he, "I have wrested my enemy's sword from his hands, the bystander who furnishes him with a fresh weapon can have no pretense to be considered as a neutral in the contest."

But, it is said, we demonstrate our impartiality by requiring the state to help neither belligerent and by requiring its citizens to help both belligerents without discrimination. It is an assumption that neutral citizens who sell contraband to *one* belligerent may not refuse to sell to his enemy on the same terms. But it is only an *assumption*. I know of no law to which individuals are subject that makes such a requirement of them. And if there were one, it could not be enforced. We know that in practice and by reason of circumstances beyond their control, citizens of a neutral state never aid the belligerents equally and seldom aid more than one side at all. It is not a question of *aiding* both sides equally but of *wronging* both sides equally. How can a neutral aid both belligerents equally without being guided by their respective needs, or wrong them equally without being guided by their respective ability to withstand the wrong offered to be done?

Where is the consistency in prohibiting the export of food supplies to warships and tolerating the export of cannon and dynamite to the land forces? You recall the terminological contest between the German and the American Governments in January of this year about hydroaeroplanes. If a hydroaeroplane is a *"vessel,"* its export must be prohibited by a neutral state; if it is an *aeroplane,* it goes free. Under either description it is absolute contraband; and the use to which the thing itself will be put by the belligerent is the same whatever it is called. Thus are we trifling with principle.

The theory that there can be in principle one kind of neutrality for

a state and another kind for its subjects, and that it is the bounden duty of the state to prohibit the sale and export of certain kinds of contraband wares and not of others, has proven difficult to reconcile with the basic principles of the science of international law. Most writers shrug their shoulders and say with the Germans: *Es ist nun einmal so.* Creasy says "that the neutral state is not bound to apply its municipal law, or the machinery of its executive, to the prevention of contraband traffic." This, he says, is *"an exception* to the general principle of jurisprudence according to which every civilized nation is bound to treat the rules of international law as incorporated with its own national judicial system." Gentlemen, if *international law* imposes a duty upon neutral states, *by what authority may they disregard it?* Oppenheim asserts that "individuals derive neither rights nor duties, according to international law, from the neutrality of those states whose subjects they are. The duty of subjects of neutrals to comply with the injunctions of belligerents (against the carriage of contraband) is a duty imposed upon them by these very injunctions of the belligerents and *not by international law."* (Vol. II, p. 364.) This is an amazing doctrine. To explain away the anomaly of a neutral state's prohibiting its subjects from committing "certain acts" and allowing them to export contraband, Oppenheim invents a third sort of legal subjection of neutral individuals, namely, subjection to the national law of the belligerents. On another page he writes, it is *"the municipal law of the belligerents* which makes carriage of contraband illegitimate and penal." He continues:

> The question why the carriage of contraband articles may nevertheless be prohibited and punished by the belligerents, although it is *quite legitimate so far as international law is concerned,* can only be answered by a reference to the historical development of the law of nations.

It is this irrational assumption that neutral citizens can be legal subjects of belligerent states and are instructed as to their rights and duties by the "injunctions" of the belligerents, that lies at the base of all the controversies and misunderstandings about contraband. But Oppenheim can not explain why that which he assumes to be *legitimate* by *international* law should be *penalized* by *municipal* law; and he, too, makes his escape by the German route of *es ist nun einmal so.*

However we may attempt to disguise the fact by artificial distinctions and casuistic theories, it remains one of the eternal realities that

a state is responsible in some form or other for whatever is done within its jurisdiction. A body politic is responsible for the acts of individuals composing that body politic, which originate within its jurisdiction and are acts of actual or constructive hostility towards a nation or nations with which such body politic professes to maintain relations of friendship or neutrality. (*Cf.* Phillimore, Vol. III, p. 218.) The fact that such acts have been or may be condoned by the injured friend, does not detract one jot or tittle from the soundness and rightness of the principles we have stated.

2. Another reason for the enactment of such prohibitory legislation by a neutral state is that it would conform to the just and lawful requirements of the belligerents themselves. All belligerents denounce the transport of contraband to the enemy under severe penalties, which they are authorized by international law to inflict upon guilty neutrals. It is true each belligerent tries constantly to seduce neutrals with the fascinating prospect of huge and unnatural profits into the hazards of this illicit traffic; but he does not and can not require them to engage in it.

3. The enforcement of such prohibitory statutes by neutral states would be an act of humanity toward the struggling belligerents, unless we are prepared to accept the Berhardian philosophy of war. For neutrals to supply both belligerents without discrimination with the most noxious forms of contraband, means simply and inevitably, where brave and spirited nations are concerned, the prolongation of the war until one, or perhaps both of the belligerents, shall be bankrupt in resources or well nigh exhausted of fighting men.

4. Such prohibitory statutes should be enacted for the further reason that the traffic in contraband is immoral *per se* when engaged in by a neutral that is indifferent as to the issues of the war and animated solely or chiefly by the hope of making money. This is a distinctively Grotian argument, but such as ought to appeal to a legislator.

5. The traffic in contraband by professedly neutral citizens being denounced and penalized by the law of nations, the constant repetition of the offense, when successfully consummated, creates a general disrespect for the rules of international law and a secret contempt for the science.

6. The traffic in contraband, when carried on in spite of the dictates of humanity and morality and in evasion of the law, tends to lower the national ideals of the neutral peoples tolerating it.

7. By the enforcement by neutral states of such prohibitory statutes, the belligerents themselves would be largely relieved of the necessity of maintaining blockades and of policing the seven seas for the interception of contraband. The forces thus relieved would be free for other and more purely military actions. Nor would there be so much likelihood of friction between neutrals and belligerents as to warships hovering about neutral coasts to the great annoyance of neutral commerce and the irritation of susceptible neutral governments. For the further assurance of the belligerents, the plan proposed does not deny the belligerents the remedies they have under the present system.

8. The present system, whereby only the transport of contraband by sea is illegal and punishable, whereas the transport of contraband by land is unregulated, is in a sense unfair to the maritime states, particularly the two island kingdoms of Great Britain and Japan. The maritime states should not be put at a disadvantage in this respect, if we would have their coöperation. They have now no means of protecting themselves against the transport of contraband overland. This need would be met by the stoppage-at-the-source plan.

9. The enforcement by neutral states of laws prohibiting the export of contraband from their territory, would simply and neatly anesthetize the hated doctrine of continuous voyage. I believe the doctrine of continuous voyage sound, though it has been greatly abused in practice. The belligerent has the right to demand that a neutral state should not submit itself to be used as a gateway or thoroughfare for the transport of contraband to his enemy; and this, too, whether the goods come from a neutral over the seas or from a neutral in a contiguous state. With the stoppage-at-the-source plan in effect, what would it profit the vendor of contraband to violate the laws of his own country by making a false statement that the ultimate destination of the goods is a neutral state, when that very neutral state likewise prohibits the export of such goods to the belligerent? Thus the neutral state instead of offering itself as a possible channel for the fraudulent and illicit traffic in contraband, actually interposes a wall against it. This leads naturally up to my next point.

10. As a result of the enforcement of such prohibitory statutes by neutral states, their legitimate commerce in non-contraband, both with other neutrals and with belligerents, will be freer and safer. Under present conditions, the captor always acts on the presumption that a neutral ship bound for an enemy port or a neutral port near enemy

territory is transporting contraband. Except when under convoy, such vessels carrying a mixed cargo are presumed guilty. Their innocence must be established by a visit and search; their manifest and other papers have little or no probative value. Under modern conditions, with large ships and large miscellaneous cargoes, the search of each vessel consumes many hours, and not infrequently can not be carried out on the high seas at all. The neutral ship is often taken into the belligerent's nearest port and detained there for days to be unloaded and reloaded, to the great damage and loss of neutral shippers and shipowners. So long as neutral states allow the export of contraband from their shores, it seems that they have no just grounds of complaint against a thorough search of each vessel intercepted by the belligerent, however long it may reasonably require and whatever the means that may be reasonably necessary. *The belligerent must obtain for himself the assurance that neutral states now fail or refuse to give.* Surely the belligerent would be glad to be relieved of the burden, the liability, and the endless difficulties and controversies with neutrals connected with the execution of these minute searches, if he had some assurance upon which he could rely that no contraband was put aboard ship in neutral ports.

By the enforcement of such prohibitory statutes, neutral maritime commerce would be safer, because the risk of confiscation of ships or of condemnation to pay expenses and costs because of contraband found on board would be almost entirely eliminated; and delays and losses to a shipper of innocent goods in the same vessel would be avoided. A shipper of innocent goods can not feel safe under the existing rules and the uncertainties as to the doctrine of infection. How is he to know when he sends his goods on board (unless he owns the ship himself) whether contraband will be carried, and if so, what proportion by value, weight, volume and freight of the whole cargo? And *who* knows what proportion in law infects the ship and renders it liable to confiscation? His goods may be thrown out at the first convenient port; and it is incumbent upon him to recover them and to reload and reship them, if he can find the space, at his own expense. He has no recourse against the captor for the interruption of his trade, the damage to himself or his customers, or for other losses by reason of the delay. In many cases, especially if his goods are perishable, he is fortunate if he recovers a fraction of their value.

Further, the prohibition of the export of contraband from neutral

states would tend to restrain the belligerent from arbitrarily extending the list of contraband articles. So far-reaching and vital is the modern industrial and economic interdependence of states, that belligerents can not afford *themselves* to be deprived of those articles that they denounce as contraband when carried to their enemies. *There is to my mind no weapon of defense against the arbitrary extension of the list of prohibited articles by belligerents, so practicable and so effectual as for a neutral to fall in with the "injunctions" of the belligerents themselves and prohibit the export of those articles that both belligerents pronounce contraband.* Each belligerent would reflect long before he added to his list articles other than those always contraband by the common consent of nations. Great Britain would under no circumstances put cotton on the list of absolute contraband if the United States had a law prohibiting the export of contraband.

11. The prohibition of the export of contraband would remove the cause of the bitterness of feeling on the part of belligerents against whom contraband and munitions of war especially, furnished by professed neutrals, are used; and would therefore strengthen the bonds of international peace. Since the currency of the false teaching that neutral trade is not and ought not to be affected by war at all and must be unhampered at all hazards, the resentment of wronged belligerents has waxed in intensity. The diplomatic history of the past two hundred years records numerous angry protests, bordering at times on threats of war, of belligerent states against the traffic in contraband by neutral citizens—a traffic which, when they were neutral, the protestants themselves tolerated freely and justified with a smug Pharisaism. Sow to the wind and reap to the whirl-wind! Germany and Austria are now reaping the fruits of this iniquitous and shifting policy. Who will reap next? This traffic in contraband, when carried on by individuals to such a large extent as to make a neutral country practically a base of supplies for the enemy, may arouse such deep resentment as to provoke war, if the offended belligerent is convinced he can win. Ordinarily he is powerless. But can a neutral state ever wisely allow its national peace to be put in jeopardy for the pecuniary gain of a fraction of its citizens who engage in commercial adventures of this sort against the explicit warning of their country? Even when the resentment of the injured belligerent can not vent itself in open hostility, his bitterness survives the war; and it may long impede the way to cordial international understanding and sympathy, and

international coöperation in good works. What an unspeakable misfortune!

On the other hand, how different it would be if all neutral states and their citizens in every way could be governed in their conduct by Jefferson's policy as outlined in his message of October 17, 1803; "In the course of this conflict let it be our endeavor, as it is our interest and desire, to cultivate the friendship of the belligerent nations by every act of justice and of innocent kindness." A people animated by a genuine desire to cultivate the friendship of both belligerents, demonstrated in acts of justice and innocent kindness towards them, will find the belligerents quick to adjust amicably any differences with them, and ready at the proper time to accept their good offices and to trust them as honest mediators. Are the profits to be got out of the traffic in contraband worth what it costs to keep this traffic open?

12. Lastly, the plan here proposed can be adopted readily because it does not require universal assent or any form of international treaty, which were the prerequisites that defeated the acceptance of Kleen's proposal in the Institute of International Law. As stated, however, to get our plan launched, some informal concert of action is presupposed, that is, it is presupposed that a number of states, on the initiative of some one or more, would informally consult as to the principle, and decide upon the advisability of the enactment of such national laws. It may be taken for granted, if the plan is accepted in principle, that a considerable number of nations would enact such prohibitory statutes. Nor must the statutes of the various nations embodying the principle of prohibiting the sale and export of contraband, necessarily be identical, either as to the articles included as contraband or as to the modes of enforcement, which was another prerequisite of Kleen's plan that made it impossible. It is enough that they agree as to the essentials, as they certainly will.

Being the national enactments of independent nations and of a self-denying character, their validity can not be called in question by the belligerents in future wars. Allies held to "benevolent neutrality" (which is no neutrality at all) would probably have to be excepted from the operation of such statutes for obvious reasons. With the principle once accepted and a beginning made by a number of states, these states will enjoy the benefits of the new system; and those neutrals not adopting it will in future wars surely be the object of special suspicion and of specially harsh repressive measures. They can not

expect to receive the moral support of those neutral states that have prohibited the traffic in contraband. It is confidently believed the plan once fairly initiated would be adopted by all states desiring to be truly neutral in future conflicts.

Now let us examine the objections that have been made by various writers against the general proposal to prohibit the sale and export of contraband.

It would result in loss of trade to the neutral states. It would be expensive and difficult to enforce. It would prove inquisitorial and vexatious to neutral shipping. There is some truth and some error in all these objections. It is further urged that the risk of confiscation and the other penalties now sanctioned by international law are sufficiently efficacious to prevent the traffic in contraband. Facts do not sustain this argument. It is said again that by the general enactment of such prohibitory statutes by neutral states, the practice of prohibiting and punishing the export of contraband, which is now optional with neutral states, will develop into an international obligation and a rule of international law. This is precisely what it is hoped will be accomplished. But, it is urged, such an international obligation to prohibit the export of contraband will increase the neutral state's liability to the belligerent, and belligerents will raise frequent complaints against the laxity of the enforcement of the law by neutrals. What a spectacle! A belligerent on his knees to a neutral begging for protection! It ought to be tried just for the novelty of it.

It is said the proposed stoppage of contraband wares at the source, would incidentally work to the advantage of the belligerent best supplied with such contraband wares at the start. That is true, and this fact may or may not be of vital importance to one of the belligerents. To be of vital importance, other conditions between them must be assumed to be equal, and the difference in the supply on hand of the respective sides at the start must not only be considerable, but irremediable, *i. e.*, so great that the side taken at a disadvantage can not possibly overcome it even by the utmost efforts of its working population and the utmost exploitation of its own natural resources. The argument is insidious. It appeals to the naturally human sympathy in all of us with the under-man. The argument assumes that the nation which is unprepared, whether through slothfulness, ignorance, surprise or whatnot, ought for that reason alone to be entitled to the aid of neutrals. It takes no account at all of the justness of the war

and utterly contradicts the fundamental conception of the neutrality of states. That a nation is short of a ready supply of certain contraband goods at the outbreak of the war is of no concern to neutral states that are friendly to both belligerents. If it is said the system we propose might under certain conditions tend to assure victory to the best prepared belligerent, *the same is true under the present system and will be true under any system.* The belligerent that is now best prepared at the start in naval forces and that can by reason of this superiority drive his enemy's ships from the seas, is the sole beneficiary of the freedom of trade in contraband. That is being demonstrated under our very eyes today. The nation that is superior on the sea is favored by the present system. To avail himself to any material extent of the open traffic in contraband, the "weaker" "unprepared" belligerent must not only possess a superior fleet and a large merchant marine, but he must have the money to buy with. The fact is clearly demonstrated by recent events that only wealthy nations with unquestionable credit can go into the neutral markets of the world and buy contraband in sufficiently large quantities to insure victory or change the result of the war. Given accumulated wealth, a large merchant marine, and a superior fleet at the outbreak of the war, is not such a belligerent in fact that one best prepared to avail himself of the traffic in contraband? The form the preparation for war may take need not be accumulated stores of contraband: it may consist in being prepared to take advantage of the licenses and the lacunae in the law of war. Indeed, the belligerent who is thus best prepared on the sea to get contraband may, and usually does, at the start already possess a far greater supply thereof than his opponent. This was proven during the Boer War. The present system usually aids the strong and hinders the weak. The American republics ought all to reject it.

We are told the adoption of this measure would so stimulate the increase of armaments as to make the world an "armed camp." 'Tis a well-worn metaphor and specious. What, indeed, is the world now but an "armed camp"? How often in recent years have we all heard it so described! How can it become more so to any considerable degree? And why should present conditions become worse solely because of a beneficent reform that would remove the cause of so many dangerous international controversies and promote international confidence and good will, and that would itself tend to restrict the

present manufacture of engines and munitions of war by individuals? The worst this passive reform could accomplish is, not an increase in the aggregate of the armaments in the world which has reached its limit, let us hope, but a transfer of the manufacture of such armaments from the hands of armament rings and trusts into the hands of the state—and that is a consummation devoutly to be wished.

The argument is specious in that it tacitly assumes that nations do and will rely upon obtaining support from nominally neutral sources during war and will hence diminish their army and navy programs proportionately during peace. No nation *does nor can rely* upon obtaining any considerable part of its equipment in a future war from neutral sources. The uncertainties are too great. The neutral state from which the belligerent had expected to draw contraband supplies may prohibit their sale and export. That very state may, indeed, be the future enemy which the confiding belligerent has to fight. Then there is always the uncertainty of political conditions in time of war; the uncertainty of available supply, on the one hand, and of purchasing power on the other; the risk of capture in transit and the irreparable loss of both ships and cargoes, to the eminent advantage of the enemy who will, of course, himself use those ships and contraband cargoes; and finally, there is the uncertainty of finding for immediate use the necessary merchant vessels that will engage in this to them exceedingly hazardous business. No belligerent nation without a large merchant marine of its own that can be commandeered, if necessary, will get more profit than harm out of the present system.

Gentlemen, what has the alleged reliance upon the present system done in the past toward the reduction of armaments? And why the present agitation for greater preparedness in the United States, the wealthiest nation on the globe, if any considerable reliance is put upon the certainty of obtaining a sufficient supply of contraband goods after the outbreak of a future war from neutral sources? *The fact is, nations are and ought to be self-reliant.* They ought to be adequately and efficiently prepared to meet all contingencies that are reasonably probable. It is an absolutely false and slanderous imputation that nations by an adequate and self-reliant preparation against probable aggression, thereby throw overboard all sentiments of international justice and all esteem for international law and proclaim to the world the reign of irresponsible force.

Gentlemen, an address which is supposed to be objective and scien-

tific, would hardly with propriety close with a peroration and appeal. But I can not forego the expression of a wish that nations everywhere would study the questions relating to the traffic in contraband, not exclusively from the viewpoint of national self-interest, but from the broader viewpoint of the welfare of the whole family of nations and of all humanity. I can not refrain from expressing the wish that some American country would take the lead (it need not be the United States) in a world-wide effort to prohibit the sale and export of contraband from neutral territory. What if a nation does thereby exceed the minimum of the legal demands that may now, under an outworn and outgrown European ideal of two hundred years ago, be made of professedly neutral states? The best moral sentiment of the world will sustain every effort to enact this reform. It is right. The present system is vexatious, unfair, dangerous, and wrong in principle and morals.

Gibbon tells us of the ancient Locrians that it was their rule that a Locrian who proposed any new law stood forth in the assembly of the people with a cord around his neck, and if the law was rejected, the innovator was instantly strangled. Gentlemen, Locrians, draw the cord, if you must!

BUSINESS MEETING

Thursday, December 30, 1915, 12 o'clock, noon

The meeting was called to order by the President, Hon Elihu Root.

President ROOT. The time having arrived, in accordance with the program, for the business meeting of the American Society of International Law, the members of the American Society of International Law will be good enough to come forward and take their part in the meeting. All persons not desiring to take part in the meeting will be good enough to retire from the room.

The CHAIR recognizes Mr. Charles Henry Butler.

Mr. BUTLER. I simply wish to make a formal motion that all the committees that were to report at this meeting, and all matters which were made a special order for this meeting, and that are not attended to at this session, be carried over, and the committees continued, until the next regular annual meeting of the Society.

President ROOT. Which will be in April.

Mr. BUTLER. At the next annual meeting.

(The motion was adopted.[1])

President ROOT. What is the further pleasure of the meeting? Is the Committee on Nominations[2] ready to report?

Mr. SNOW. Mr. President, I have the honor to make the following report.

The Committee on Nominations respectfully reports the following nominations for the year 1915-1916:

---

[1]See minutes of the meeting of the Executive Council, these Proceedings, p. 139.

[2]This committee, consisting of Mr. Alpheus H. Snow, Chairman, and Messrs. James W. Garner, Chas. Noble Gregory, Andrew J. Montague and James L. Slayden, was appointed by the Executive Council, at a meeting held for that purpose on December 29, 1915.

For President: Hon. Elihu Root.

For Vice-Presidents:

Chief Justice White.
Justice William R. Day.
Hon. P. C. Knox.
Mr. Andrew Carnegie.
Hon. Joseph H. Choate.
Hon. John W. Foster.
Hon. George Gray.
Hon. William W. Morrow.
Hon. Richard Olney.
Hon. Horace Porter.
Hon. Oscar S. Straus.
Hon. Jacob M. Dickinson.
Hon. James B. Angell.
Hon. William H. Taft.
Hon. William J. Bryan.
Hon. Robert Bacon.
Hon. Robert Lansing.

For Members of the Executive Council to serve until 1918:

Hon. Chandler P. Anderson, New York.
Charles Henry Butler, Esq., District of Columbia.
Professor Charles Cheney Hyde, Illinois.
Prof. George W. Kirchwey, New York.
Hon. John Bassett Moore, New York.
Jackson H. Ralston, Esq., District of Columbia.
James Brown Scott, Esq., District of Columbia.
Prof. George G. Wilson, Massachusetts.

To fill the vacancy caused by the lamented death of Gen. George B. Davis in the Class of Members of the Executive Council whose terms expire in 1917: Prof. Amos S. Hershey of Indiana.

(Signed) ALPHEUS H. SNOW, *Chairman.*
(Signed) A. J. MONTAGUE.
(Signed) CHAS. NOBLE GREGORY.

President ROOT. The report will be received. What is the pleasure of the meeting in regard to the disposition of the report of the Nominating Committee? Are there any other nominations to be made to the offices covered in that report? There being no other nominations, the question will be upon the adoption of the report, which will be the election of the officers named.

(The motion was put.)

President ROOT. The motion is agreed to, the report is adopted, and the officers nominated are elected.

What is the further pleasure of the meeting?

Dr. JAMES BROWN SCOTT. The motion of Mr. Charles Henry Butler, and the acceptance of the report of the Nominating Committee, ordinarily finishes the business which the Society transacts at this time; and after the termination of this part of the session there is held ordinarily a meeting of the Executive Council, which no doubt will follow this.

I would like to trespass upon your time for one brief moment, sir, to inform you that this is in a way the celebration of the tenth year of the existence of the Society. Steps were taken in June, 1905, at Lake Mohonk, to form an American society of international law. A provisional committee was appointed consisting chiefly of members from New York, and they met from time to time at the residence of Mr. Oscar S. Straus, with the result that definite form was given to the movement. A constitution was drafted and presented to a meeting held at the office of the American Bar Association on the 26th day of January, 1906, at which time and at which place, under the presidency of Mr. Oscar S. Straus, the American Society of International Law was inaugurated, and it has now concluded the first decade of its usefulness.

I do not intend to dwell upon any of the results which the Society has achieved, but merely to call attention to the fact that we have successfully passed the first decade of our existence, and that the finances of the Society have been so carefully husbanded that all expenses of the Society have been paid without the levying of an assessment; that the *American Journal of International Law,* the organ of the Society, has appeared for the past nine years, the October number completing the ninth year, without requiring an assessment of any kind. And I am very happy to say, in conclusion, that there is a modest balance to the credit of the Association, in bank, of the sum of approximately $7,000.

President ROOT. May I ask Dr. Scott whether the regular meeting, which would naturally be held in April next, will not be rather in the nature of a celebration of the first decade of the Society?

Dr. SCOTT. Mr. Chairman, that is for others to propose. I merely call attention to the fact that this is the tenth year since the organiza-

tion of the Society. If it should be the desire of the members of the Society to make something of a feature, or to call particular attention at the April meeting, to the organization of the Society and its work, it would certainly be very agreeable to us who have participated in the proceedings and were present at the beginning of its usefulness.

President ROOT. I wish to say to the members of the Society who are present, something that was very agreeable to my ear. A year or so ago, in conversation with one of the most distinguished authorities in international law, a professor in one of the great English universities, he told me that the JOURNAL published by this Society was in his opinion, and in the general opinion as he observed it, the best journal of international law that had ever been published.

What is the further pleasure of the Society? If there is no further business, the Chair will announce a meeting of the Executive Council to be held immediately upon the adjournment of this meeting. A motion to adjourn is in order.

(Upon motion, duly made and seconded, the Society adjourned.)

MEETING OF THE EXECUTIVE COUNCIL

Thursday, December 30, 1915, 12.15 o'clock, p.m.

Present:

Hon. Elihu Root
Mr. Charles Henry Butler
Hon. George Gray
Prof. Charles Noble Gregory
Prof. John H. Latané
Hon. A. J. Montague
Mr. Jackson H. Ralston
Mr. James Brown Scott
Prof. Theodore S. Woolsey

President ROOT. The Committee will come to order.

Dr. SCOTT. It is usual, Mr. Chairman, on this occasion, to have presented and considered, as our first business, the report of the Treasurer of the Society, who is, as you know, Mr. Chandler P. Anderson. He has left the country, and in his absence, Miss Thompson, his secretary, will present the report.

President ROOT. We will be glad to hear from Miss Thompson.

Miss HOPE K. THOMPSON thereupon presented the report of the Treasurer, which is printed herein, following these minutes, page 145.

President ROOT. Without objection, the report will be received and placed on file. Is there any motion to be made regarding the Treasurer's report, or the matters it contains? (After a pause.) What is the further business before the Council?

Mr. CHAS. HENRY BUTLER. It is necessary for the Council to elect certain officers and committees of the Society.

Dr. SCOTT. I nominate the following gentlemen for members of the Executive Committee: Messrs. Elihu Root, Hon. George Gray, Jackson H. Ralston, Esq., Hon. Robert Lansing, Hon. John Bassett Moore, Prof. George G. Wilson, and Hon. Oscar S. Straus.

President Root. Are there any other nominations for those positions?

There being no other nominations, the Secretary was directed to cast a single ballot for the nominees. The Secretary, Dr. Scott, reported that the ballot had been cast and the gentlemen nominated were declared elected members of the Executive Committee.

Dr. Scott. Mr. Chairman, it is now necessary to elect these officers; the Chairman of the Executive Committee, the Recording Secretary, Corresponding Secretary, Treasurer, and Assistant to the Secretaries.

The following nominations were made for these offices:
Chairman of the Executive Committee: Hon. John W. Foster.
Recording Secretary: Mr. James Brown Scott.
Corresponding Secretary: Mr. Charles Henry Butler.
Treasurer: Hon. Chandler P. Anderson.
Assistant to the Secretaries: Mr. George A. Finch.

President Root. Are there any other nominations for those offices?

There being no other nominations, the Recording Secretary, upon motion duly made and seconded, cast a single ballot for the nominees and they were declared elected.

The following gentlemen were then elected members of the Board of Editors of the American Journal of International Law:

Mr. James Brown Scott, Editor-in-Chief

Mr. Chandler P. Anderson	Hon. Robert Lansing
Prof. Charles Noble Gregory	Dr. John Bassett Moore
Prof. Amos S. Hershey	Prof. Jesse S. Reeves
Dr. David Jayne Hill	Prof. George G. Wilson
Prof. Charles Cheney Hyde	Prof. Theodore S. Woolsey

George A. Finch, Esq., Secretary of the Board of Editors and Business Manager

President Root. The other committees are covered by Mr. Butler's motion at the Society's meeting?

Dr. Scott. I should assume so.

Mr. Butler. For the purpose of making it regular, I move that my motion, already made in the meeting of the Society, be considered made in the Council, as to business exclusively before the Council.

(The motion was agreed to.)

According to this motion (page 135 of these Proceedings), the following committees are continued until the next annual meeting of the Society:

Standing Committee on Selection of Honorary Members: George G. Wilson, Chairman; Jackson H. Ralston, Theodore S. Woolsey.

Standing Committee on Increase of Membership: James Brown Scott, Chairman; Charles Cheney Hyde, John H. Latané, Jesse S. Reeves, Theodore S. Woolsey.

Auditing Committee: Clement L. Bouvé, Jackson H. Ralston.

Committee on Codification: Elihu Root, Chairman, *ex officio;* Chandler P. Anderson, Charles Henry Butler, Lawrence B. Evans, Charles Noble Gregory, Robert Lansing, Paul S. Reinsch, Leo S. Rowe, James Brown Scott, George G. Wilson.

Committee on Publication of Proceedings: George A. Finch, Otis T. Cartwright.

Committee on Tenth Annual Meeting: James Brown Scott, Chairman; Philip Brown, James W. Garner, Robert Lansing, Walter S. Penfield, Jackson H. Ralston, Eugene Wambaugh.

President Root. Is there any further business?

Mr. Butler. Mr. President, I wish to make a motion which may seem to have perhaps a little of the element of discourtesy in it, but I wish to have it understood that there is no such element in it so far as the proposer is concerned. I think one of the greatest safeties of a meeting, and one of the greatest elements of success, is that the papers read be confined to the time allotted. I know it is of the utmost difficulty to do that. I think that the presiding officers should be protected when calling upon the speakers to hold themselves within the time.

Therefore, I move that the Committee on Program be instructed to inform each person asked to speak at a meeting, or to read a paper, of the exact amount of time allotted for that purpose, and that the presiding officer at each session shall notify each speaker immediately before the making of his address or the reading of his paper, of the time allotted and of the necessity of his remarks being confined to that time.

Mr. Gray. And admonish him when his time has expired.

Mr. BUTLER. As Mr. Justice Gray suggests, and I adopt the amendment, admonish him when his time has expired. I would like to say that on several occasions the meetings of the American Bar Association have become tedious and lost their good effect by reason of the absolute disregard of the promise made to keep within time by the speaker, to the great embarrassment of the presiding officer and to the great inconvenience of the persons attending the meeting. If the presiding officer is obliged by the rule of the Council to notify the speaker, he is relieved of personal responsibility and can explain in advance to the speaker that he has no alternative, and in that way I think the speaker will have to recognize the fact that he must be admonished, that he must stop, and that the presiding officer will be relieved of any embarrassment in so doing.

Dr. SCOTT. I second that motion, but in so seconding it, I desire to say that this matter has been considered frequently by the Executive Council, and that a resolution stands upon the records of the Society precisely to the same effect. The Program Committee always informs the speaker that he has twenty minutes at his disposal, and he is asked to prepare a paper subject to that condition. The great difficulty seems to be in the good nature and the long-sufferingness of the presiding officer, who, not satisfied apparently with suffering himself, spreads it like a mildew over the audience. I think the chief sinner is the presiding officer, that the resolution should be especially aimed at him, and that he should be held responsible for the tediousness of the meeting.

President ROOT. If you will let me say a word informally, I do not think it is the presiding officer. I think the subject is left as a matter of personal application, and not as a matter of rule. I think that if there be a formal rule, and the text of the rule be communicated, a rule which does not simply put a time limit on the speaker, but requires the presiding officer to bring the address to a close and call the next speaker, the desired result will be accomplished. There is a very great difference between the two.

Mr. BUTLER. I trust that I worded my motion so as to bring that in.

Dr. SCOTT. Would it not be a good idea to print it on the program?

President ROOT. Of course it should be printed on the program, and if that rule is adopted it would be. Suppose we have the stenographer read the motion.

(The motion as made by Mr. Butler was read by the stenographer.)

President ROOT. Suppose you put it that the time allotted be stated upon the program and that the presiding officer be required to call the next speaker at the expiration of that time.

Mr. BUTLER. I accept that amendment, and in accepting it I will state that that was the rule that was adopted at that famous Pan American Conference at which they had something like a hundred speakers, in New York. Each speaker was informed as he got up that at such and such a time the next speaker would be introduced, and the presiding officer proceeded at that time to introduce the next speaker, whether the other man was talking or not. It worked wonderfully. And each one of them had the one-minute bell that warned him, before the expiration of his time.

President ROOT. The Merchants' Association of New York has a series of luncheons, and they run them I think for an hour and a half. They dispose of their luncheon inside of thirty minutes, and they have the time limited for speeches, and when the hour for adjournment comes the gavel comes down and they adjourn. They are business men and they go back to their business. Everybody understands it, and it works admirably. The important thing is to have people understand that there is a rule, excluding all possible personal equation from it.

The question is on the motion of Mr. Butler, which as amended, reads:

> *Resolved,* That the Committee on Program be instructed to inform each person, asked to speak at a meeting, or to read a paper, of the exact amount of time allotted for that purpose; that the time allotted be stated upon the program, and that the presiding officer be required to call the next speaker at the expiration of that time.

(The motion was agreed to.)

President ROOT. Is there any further business before the Council?

Dr. SCOTT. Mr. Chairman, it has been stated here that there will be the regular annual meeting in April. Do you think, in view of the fact that we have had a meeting here in December, that there should be a formal resolution to hold the regular annual meeting of the Society in April, 1916?

President ROOT. Is it customary?

Dr. SCOTT. No, it has not been customary; but in view of the fact that there has been a meeting here, it might be considered so closely approaching the April meeting, that the April meeting would not be held. I was merely asking if it seemed desirable to you, sir, to have a formal statement of it which could be communicated to the members so that there would be no doubt at all in the mind of every member, as to the resumption of regular work at the regular time, namely, the last week in April.

Mr. GREGORY. I have heard persons speak of the uncertainty as to whether we would have a meeting, and I think it would be very well to remedy that uncertainty.

Dr. SCOTT. I make the following motion:

> *Resolved*, That the American Society of International Law hold its tenth annual meeting in the last week of April, 1916.

Mr. BUTLER. I second the motion.

(The motion was agreed to.)

President ROOT. The Chair is requested to announce a meeting of the Board of Editors at No. 2 Jackson Place, at 3 o'clock this afternoon.

(Thereupon, on motion duly made and seconded, the meeting of the Executive Council adjourned.)

TREASURER'S REPORT

April 25, 1914, to December 30, 1915

INVESTMENT STATEMENT

Receipts

Life membership dues, 27 life members at $100 each (23 life members living)		$2,700.00

Investments

June 23, 1906.	1	$500 Central Pacific first mortgage 4% bond at 102 with commissions	$510.63	
Dec. 21, 1906.	1	$500 Central Pacific first mortgage 4% bond at 100½ with commissions	503.73	
Nov. 14, 1907.	1	$500 Central Pacific first mortgage 4% bond at 90 with commissions	451.08	
July 2, 1908.	1	$500 Central Pacific first mortgage 4% bond at 97½ with commissions	486.75	1,952.19
Dec. 30, 1915.		Balance on deposit at Riggs National Bank		$747.81

PRINCIPAL ACCOUNT

Apr. 25, 1914.	Balance on deposit at Riggs National Bank	$447.81
	3 life members at $100 each	300.00
Dec. 30, 1915.	Balance on deposit at Riggs National Bank	$747.81

INCOME ACCOUNT

Receipts

Balance on deposit at Riggs National Bank carried forward from previous account		$1,648.46
Balance on deposit at Union Trust Company carried forward from previous account		1,511.25
Annual Dues for 1913		200.00
1914		1,305.00
1915		4,040.00
1916		35.00
1917		5.00
1918		5.00
Exchange on checks		1.29
Foreign postage, 1914	$50.80	
1915	91.77	
		142.57
Subscriptions to Journal		1,751.00
Sale of Proceedings		138.50
Income from life membership dues		80.00
Interest		157.99
Refund (express)		.72
Banquet fund		475.00
		$11,496.78

Forward		$11,496.78

EXPENSES

Salary Account:		
Secretary of the Board of Editors and Business Manager (Checks Nos. 466, 468, 473, 474, 479, 481, 487, 1007, 1014, 1018, 1024, 1028, 1032, 1035, 1038, 1047, 1048, 1050, 1054, 1059)	$2,000.00	
Assistant to Treasurer (Checks Nos. 467, 469, 471, 475, 480, 482, 486, 1009, 1016, 1020, 1023, 1026, 1034, 1036, 1040, 1045, 1049, 1051, 1055, 1056)	500.00	
		$2,500.00
Secretary's disbursements:		
Postage, telegrams, express, etc. (Checks Nos. 465, 1005, 1006, 1015, 1019, 1025, 1029, 1033, 1039, 1060)		100.78
Treasurer's disbursements:		
Postage, P. O. Box. etc. (Checks Nos. 472, 1017, 1027, 1041, 1057)		30.80
Supplies:		
Stationery, notices, receipt books, etc.,		
Byron S. Adams (Checks Nos. 483, 1021, 1037, 1042)	319.75	
Globe, Wernicke Co. (Check No. 1022)	.78	
		320.53
Advertising:		
Wilbur S. Finch (Check No. 1013)	25.00	
Byron S. Adams (Check No. 1021)	290.25	
		315.25
Furniture Account:		
A. J. Wolfe (book binding) (Check No. 470)		25.25
Special July Supplement to Journal:		
Otis T. Cartwright (Check No. 1058)		75.00
Journal:		
On account of publication—		
Baker, Voorhis & Co. (Check 1046)	$2,379.25	
On account of postage—		
Baker, Voorhis & Co. (Check 1046)	112.35	
On account of preparation—		
Kathryn Sellers (Checks Nos. 476, 484, 1012, 1030, 1044, 1052)	$150.00	
O. T. Cartwright (Checks Nos. 478, 485, 1011, 1031, 1043, 1053)	240.00	
Geo. D. Gregory (Checks Nos. 1001, 1061)	18.00	
B. W. DeLoss (Check No. 1062)	18.60	426.60
		2,918.20
Reprints of articles:		
Baker, Voorhis & Co. (Checks Nos. 1002, 1008, 1046)		186.61
		$6,472.42 $11,496.78

Forward		$6,472.42	$11,496.78
Proceedings, 1914:			
Byron S. Adams, printing, etc. (Check No. 1004)	$711.95		
Smith & Hulse, reporting meeting (Check No. 1003)	105.02		
Postage, wrapping, etc. (Checks Nos. 477, 1005, 1010)	149.63		
		966.60	
Banquet:			
Willard Hotel Co., banquet, etc. (Check No. 464)		525.00	7,964.02
Balance December 30, 1915			$3,532.76
Balance at Union Trust Comany		$1,580.20	
Balance at Riggs National Bank		1,952.56	$3,532.76

(Note: The account with Baker, Voorhis & Co. for the year 1915 has not yet been settled.)

FIFTH SESSION

Joint Session of the Society and the Subsection on International Law of the Second Pan American Scientific Congress and the American Institute of International Law

Thursday, December 30, 1915, 2 o'clock p.m.

The meeting was called to order by Dr. CHARLES NOBLE GREGORY, Chairman of the Subsection on International Law.

The CHAIRMAN. Ladies and Gentlemen: The first topic for our consideration is one of the profoundest interest to the whole world at the present time, "Should international law be codified? And if so, should it be done through governmental agencies or by private scientific societies?" As the first speaker upon that topic, I have the pleasure of calling upon a gentleman who has served as the president of the American Bar Association, as the president, substantially, of every learned society in America, and of almost every learned society in Europe, always with the highest distinction and faithfulness, a gentleman who has, moreover, been the Chief Justice of his good State, Connecticut, and its Governor, and who is a constant contributor to the best thought of the world on international law. I have the honor and pleasure to call upon Governor Simeon E. Baldwin.

SHOULD INTERNATIONAL LAW BE CODIFIED? AND IF SO, SHOULD IT BE DONE THROUGH GOVERNMENTAL AGENCIES OR BY PRIVATE SCIENTIFIC SOCIETIES?

ADDRESS OF SIMEON E. BALDWIN,

Formerly Chief Justice of the Supreme Court of Connecticut and President of the International Law Association

Mr. Chairman, ladies and gentlemen: In arranging the program for this meeting, and treating the subject which has been stated by the Chairman, it was not thought best to refer to the doings of the First Pan American Scientific Congress at Santiago or of the various Amer-

ican international conferences at Mexico City, Rio de Janeiro, etc., in former years, but to take up the question *de novo,* and ask whether codification is practicable, and, if practicable, how best it can be accomplished.

Let me say in the first place that, in a gathering like this, there are certain things that must be assumed. A Pan American Scientific Congress in the second decade of the twentieth century is not likely to engage in laying foundations for any proposition where there are foundations for it, laid long since, and which, so far as we can judge, are adequate to sustain the burden.

Let me take it for granted, then, that the main office of a code is to state in clear and orderly form what has already been established; while a subordinate object may properly be to supplement what exists by adding what may be necessary to make a scientific whole.

From this starting point, let us proceed to ask if the task of codifying international law presents any insuperable difficulty.

If it does, it lies in the selection and statement of the rules which can fairly be deemed to be established. Such as have received, during a long course of time, the unqualified assent of all the great Powers may properly be classed as belonging in this category. They belong there, even if some of the smaller Powers disown their obligation.

Formerly, when it was an affair of the Christian Powers only, the greater and the lesser countries were more strictly bound together by force of a religious tie. A more intelligible cause of union has been substituted by the admission, within the pale, of nations which, while adhering to other theories of theological belief, acknowledge similar standards of morals and civilization; but, while better defended by reason, it lacks the vital warmth of the original body of nations, devoted to the same faith.

Incontestably, however, there are rules which through a long course of time have received the unqualified consent of every great Power, and also of a considerable number, if not all, of the lesser ones.

Were it simply to achieve the codification of these, the attempt would be well worth making. It would be to produce but a small code, and undeniably a partial one, but so far as it went it could not fail to be useful.

In our American Constitutions, the declaration is often found: "A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free institutions." In the same spirit we may say that in the regulation of international inter-

course a frequent recurrence to fundamental principles is essential to the security of the world.

In attempting to answer the question, therefore, whether international law should be codified, we are not to confine ourselves to the consideration of long and ambitious compilations. The law of evolution teaches us to make haste slowly. In ordering any great world movement—and none can be greater than one that aims to bind mankind by a common rule—we may justly be content with small beginnings. Long preparation would be demanded for a complete code of the law of nations. Much less of time and thought would suffice for framing a partial one. But is not any code, though of the shortest, better than no code? Would it not be some assurance against misunderstandings, real or pretended? Would it not render more odious any repudiation, under the stress of circumstances, of rules of national conduct previously admitted to be obligatory?

Austin, in his chapter (XXXIX) on Codification, has said that "it is the re-expression of existing law." So far as concerns the binding force of a code, this is doubtless true. But it gains this force by adoption, until which it is nothing but a work of literature.

Codification covers an attempt to state what is law in orderly connection with what, as to other matters, in the judgment of the codifier, ought to be law. It covers, in other words, as commonly understood, a project of a code, representing an advance on what has gone before, or perhaps a retrogression in ideals.

Sir Frederick Pollock describes what we call the rules of international law as most nearly analogous "to those customs and observances in an imperfectly organized society, which have not fully acquired the character of law, but are on the way to become law."[1] This doctrine can not be accepted in the United States, where our Constitution plainly refers to the law of nations as an existing body of obligatory rules or principles, and our courts administer it as being fully a part of our municipal law. In other words, we do not recognize it as constituted of rules in the making, which one nation may expect another to observe, but of rules already made and now governing the civilized world. Nor has America stood alone in this. The state papers are without number in which European Powers have, particularly since the beginning of the nineteenth century, referred to international law

[1]First Book of Jurisprudence, 13.

as something obligatory in the regulation of international intercourse. Take the Declaration of Aix-la-Chapelle of November 15, 1818, for a single instance. The great Powers, Austria, Russia, Great Britain, France, and Prussia, taking part in the congress, met there to restore France to herself. Each was represented by its sovereign in person with the exception of Great Britain and France. This declaration, in which all concurred, was "never to depart, either among themselves, or in their relations with other states, from the most strict observance of the principles of the law of nations."

It may be that the codification of international law to which such a congress as this might give its aid and counsel should be limited to a narrower range. Americans can best state the law of America. To look at but a single point, the International American Congress of Washington in 1890 adopted with substantial unanimity a scheme for a treaty, the first article of which declared that "the republics of North, Central, and South America hereby adopt arbitration as a principle of American international law, for the settlement of the differences, disputes, or controversies that may arise between two or more of them."[2] It is true that this treaty was never in fact negotiated, but many other American treaties, looking to the same end, have since been concluded, and it is believed to be a tenable position that for one American Power to make war upon another which was ready to proceed to arbitration, would be generally deemed a departure from American principles.

It has been recently contended by Dr. W. Evans Darby, that of these treaties those which express what is generally known as the plan of Secretary Bryan are really steps backward, because the reports of the international commissions of inquiry for which they provide have in no respect the force of a binding decision.[3] But no decision of arbitrators binds a sovereign state, except in the forum of the national conscience and by force of the public opinion of the world. A report of the facts out of which an international controversy has arisen, made by an impartial commission, selected by the Powers to the difference, after taking time for full consideration, would justly appeal to similar support.

Passing now to the second branch of the subject under discussion, it would seem to me that, so far as we can reason from the past, the

---

[2]Report of Conference, 1079.

[3]Report of the International Law Association for 1915, 116.

safest initiators of legal statements in code form are private individuals, acting either solely by themselves or through private scientific societies to which they may submit their views. The brief and terse Declaration of Paris of 1856 may be regarded as an exception.

The unofficial Commentaries of Gaius paved the way for the authoritative Institutes of Justinian. David Dudley Field's Draft Outlines of an International Code, published in 1872, was the foundation stone both of the Institute of International Law and of the International Law Association.

Originally, a single head can best conceive the general form and expression of any work of codification. One man can give it unity, but he can not give it completeness. Let him do his utmost and it will contain faults and omissions which the careful study of others, suitably qualified, will not fail to detect. I believe that, in pursuing this method of collaboration, a committee of a scientific academy or association, of recognized merit, is more likely to achieve success than a commission constituted by public authority. Such a committee will commonly be composed of men whose training fits them for the task, and their report to the main body, which will certainly contain some men of mark, will be subjected to critical study before receiving its approbation. A public commission is more likely to be constituted of statesmen than of scholars; more likely still to be constituted of politicians than of statesmen. Such an agency of government must, of course, be invoked at some stage of the process. The work of no scientific body could safely be accepted without thorough examination by public authority. But such an examination may wisely be deferred until the efforts of private individuals and private organizations of individuals have been fully completed.

What now should be the aims of those seeking to frame a code, whether partial or universal, of international law?

It should be clear in statement.

It should be as brief as is possible, without risking obscurity.

It should manifest a unity of conception.

It must be arranged in a simple and natural order.

These are hard conditions to meet.

To state any proposition as a rule of action, concisely, in clear terms, is no easy matter. A code must consist of a large number of such propositions, respecting the same general subject. It is desirable that they should be worded, so far as practicable, in the same style. Style

constitutes literature. A code of international law, whoever may prepare it, is something to be submitted to all the peoples of the world for their approval. It should be written in a manner ensuring, so far as possible, its being readily understood. It is hardly less important that it should be so written as to induce its being widely read. Its mode of composition and whole make-up should be attractive, both to legal scholars and to the general public in each country. It should not jar the mind of the reader by suddenly passing from one style of expression to another. One plan of composition must be decided on at the outset and steadily adhered to.

Some men by nature, in stating their views in writing, are inclined to be sententious; some to be epigrammatic; some unwilling to commit themselves to any proposition, until they have attached to it a series of qualifications.

International law will never be well codified until it be expressed in words that flowed freely from the pen, and largely from the pen of one man, only. They must be such as to meet the approval of others, and most of all the approval of time.

Festina lente must be the rule where one is trying to meet the views of all mankind.

The CHAIRMAN. Continuing the topic of the codification of international law, the Chair, which had pleasure in calling upon one whom we might almost call the dean of international law among us, now turns to one of the younger scholars in international law, but one who has already won reputation in our country and in the countries beyond the Atlantic. It has been a great pleasure to the Chair in taking a humble part in the various societies devoting themselves to international law both in this country and in other countries, to have as a colleague, greatly appreciated everywhere, Mr. Arthur K. Kuhn, of New York, and he takes great pleasure in calling upon him to address us at this time.

SHOULD INTERNATIONAL LAW BE CODIFIED? AND IF SO, SHOULD IT BE DONE THROUGH GOVERNMENTAL AGENCIES OR BY PRIVATE SCIENTIFIC SOCIETIES?

ADDRESS OF ARTHUR K. KUHN,

Of the New York Bar, Lecturer in Private International Law in Columbia University

I

The earnest longing by men of good-will for an era wherein the relations between states shall be governed by a régime of law, has been immeasurably intensified by recent events. To use a phrase of President Wilson: "Force everywhere speaks out with a loud and imperious voice in a titanic struggle of governments." Where is the magic force to draw order out of chaos? States today are permeated *within* by the collective desire and the coördinated purpose to maintain order and to do justice. To this end, individual interest is subordinated to the common good. How different, however, are conditions in the *external* relations of states.

Perhaps the organization of the world on the basis of universal empire as we find it in the first period of political development, was, theoretically at least, the best suited to an universal reign of law. But the ancient empires which attempted to govern the world, whether from Persia, Egypt, Greece, or Rome, were colossal autocracies and accomplished order without liberty at the expense of all but the ruling class. The second period is exemplified by the feudal system of the middle ages. Each race or tribe enjoyed independence in a loosely organized state of society where individual liberty soon gave way before the aggression of strong individuals. Its culmination was the formation of numerous petty states, intensely jealous of one another, subject to many disturbances within, and tending toward perpetual strife without. The condition of Europe at the time of the Thirty Years' War is well described as "A complex product of race affinities, dynastic interests and religious antagonisms, from which every bond of unity had disappeared."[1]

The third period, that in which we now find ourselves, is characterized by national unity through dynastic and political consolidation, a

[1] Hill, A History of European Diplomacy, II, 569.

more effective organization from within and an equilibrium more or less stable, resulting from the theory of the equality of states. The third period resulted from the intolerable conditions of the second; just as the second had developed because of reaction against the first.

But the present organization of the world is fortunately characterized by something further, not ascribable to the mere morphology of state. It lies in the progress of the mind of man, in the advance of human nature as a whole, in a corporate conscience evolved although imperfectly articulated. Grotius was the first to discern this latent force and work it out in practice so as to be acceptable to the intelligence of rulers. He tells us that in the Thirty Years' War he "saw prevailing throughout the Christian world a license in the making of war of which even barbarous nations would have been ashamed."[2] To control this license, he gave to the world what, in its final analysis, proved to be a code based upon precedents which he believed he saw in ancient authorities, both secular and lay. Though without legislative sanction and lacking both physical force and administrative organization, the Grotian system has had immense influence upon the relations and conduct of rulers down to the present time. In the three centuries which have elapsed, the nations have, from time to time, striven to elaborate, in systematic form, standards of conduct in certain of their relations during peace and war, sanctioned, however, only by their own pledges of faith. With this achievement recorded, the history of progress in international relations terminates, and until a new step forward is taken, no new chapter can be written.

David Dudley Field, in the preface to his International Code, says that a code is a digest of *law* molded into distinct propositions and arranged in scientific order. An international code in the strict sense is impossible unless law is interpreted as an obligatory rule of action with some authoritative power to construe, as well as some operative force to execute. Even Grotius must have recognized this when he foresaw that it was imperative to have the controversies of nations *terminated* by the decision of others not interested and suggested an effective international agency "in which measures may be taken to *compel* the parties to accept peace on equitable terms."[3]

Perhaps the world is now ripe for this next stage in its political evolution. Recent events and present experience demonstrate that the

---

[2]Prolegomena, XXVIII.

[3]Book II, Chap. 23; Whewell's edition, Vol. II, p. 406.

intensive development of state sovereignty which began with the Peace of Westphalia in 1648, has now culminated in an exaggerated national consciousness, dangerous to the peace of the world. It was firmly believed that the growth of the national idea was continued along safe pathways by the Congress of Vienna in 1815, the Congress of Paris in 1855 and the Conference of Berlin in 1878. Though each nation sought its individual advantage, each also exercised a measure of self-restraint. As Sir Travers Twiss remarked of the Congress of Vienna, it inaugurated the principle that the states owe to the community of nations duties to which their special interests must be subordinated.[4] But the delicate adjustments accomplished by these congresses were, in each case, disregarded as soon as the balance of power which sanctioned them was disarranged. Even the limited codifications of international practice undertaken in times of peace, as at Paris in 1856, at Brussels in 1874 and at The Hague in 1899 and 1907, require the same restraint for their interpretation as was exercised in their elaboration. The codification of an international system as an entirety must remain a task of academic achievement until the sovereignties of the world are willing to limit the "national idea" by the surrender of part of their sovereign powers in the interest of the common good. So long as imperialistic ambitions flourish in the councils of great Powers, just so long will efforts toward codification be thwarted by a play for advantages. In the absence of world federation, codification must depend upon *uberrima fides* not only in the elaboration of the system but also in its subsequent interpretation. When that fails, the whole structure falls together like a house of cards. So long as national self-interest alone rules the conduct of states, codification can neither be satisfactory nor permanent. Indeed it may sometimes be dangerous, for if the discussion of the minutiæ of a code of international law is to be accompanied by considerations of the effect of each rule upon the political situation of the individual state, the elaboration of such a code, at least after it has passed the academic stage, is apt to be the cause of suspicion and friction, tending toward dissension where before there was none. The *volte face* which occurred between the first and second Hague Conferences in the policy of some countries on certain of the questions (*e. g.*, on the rules of aërial warfare) can be explained only by a change in the military situation of certain states. Similarly, the failure to ratify the Declaration

[4] *Revue de droit international*, XVII, p. 201.

of London may be laid at the door of naval strategy. Its rapid and successful elaboration is in no small degree to be ascribed to the fact that the tribunal for its interpretation and application had already been agreed upon. But as Sir Henry Campbell-Bannerman remarked, it seemed too much to expect that the nations would give it consideration without any political *arrière pensée.*

So long as this spirit prevails, codification soon loses its chief advantages, that of crystallizing practice and making the indefinite, definite and certain. In the note dated September 24, 1915, from the Austro-Hungarian Minister of Foreign Affairs to the Ambassador of the United States at Vienna relating to shipments of munitions of war it is said:

> A certain danger attaches to the gradual codification of international law, inasmuch as the wording of the conventions governing the laws of nations might be considered as more important than the elementary principles underlying these laws when they have not been specifically formulated in international treaties.

But if the code is not to be final, what *is* to be final? It confirms the fact that when codified law clashes with momentary national self-interest, there is no assurance, in the present organization of the world, that an *ex parte* claim will not upset the finality of codification at any point in the system.

Recent experience does not even permit us to assume that the existing codification of the laws of war has either limited its scope or mitigated its horrors. On the contrary, at a period when the codification of this part of the law of nations has been elaborated to a detail never before known, and in part ratified officially, we are witnessing, under the guise of reprisals, the use of the cruelest agencies of warfare. Was Moltke right after all when he wrote Bluntschli in 1880 ascribing all progress in the conduct of war since the Thirty Years' War solely to the sense of justice and honor prevailing among those who conduct war and not to codified laws?[5] It must indeed be admitted that his statement that no neutral would take up arms simply because the laws of war had been violated has been confirmed by the most recent events. Let us learn from experience, even though the lesson be bitterly disappointing. Let us not lull ourselves into a sense of false

[5]Bluntschli's Memoirs, III, 471–473.

progress, but realize that some authoritative international agency, not necessarily a single tribunal, with effective means to pass judgment upon every breach, if not to enforce penalties, must be created *before* any codification, no matter how perfect, can gain respect or accomplish its purpose. Only then will codification have taken on the character which Bentham considered indispensable, of being "the common and equal utility of all nations."

The conclusion to be drawn from the foregoing is not that codification is undesirable. On the contrary, the whole tendency of modern jurisprudence is in its favor. The whole of continental Europe and the whole of Latin America have long regarded codification as essential to the certainty of justice and in no wise inconsistent with progress in jurisprudence. Even the Anglo-American sphere of jurisprudence has in recent years evidenced a marked appreciation of its advantages. In the United States, codification is progressing as part of the movement for uniformity in State legislation. How can it fail to serve in the international field where unity and certainty are the chief *desiderata?* Our point is, that codification in order to be ***effective*** must proceed hand in hand with the establishment of an international forum. If the nations are unwilling to surrender a part of their sovereign will by placing the interpretation of the code within the competence of independent jurisdiction, the code will tend toward becoming in the stress of actual events only a standard of ethical ideals to which all are willing to subscribe but none to observe. The codification of international practice must be subordinate to and regulated by the nature, functions and powers of an international magistracy, though not necessarily a single tribunal. No true code can subsist apart from the instrumentalities of its enforcement. The elaboration of a substantive code, independent of the establishment of the forum and its procedure, reverses the course of legal development and postpones rather than accelerates the triumph of international law.

II

It follows from the previous discussion that wherever, from the nature of the subject-matter, national *fora* are competent to determine controversies, codification may proceed without regard to new instrumentalities of enforcement. Thus in that broad field of jurisprudence which regulates the international commerce of the world in times of

peace, political considerations seldom, if ever, enter into legislative policy. Rights of private international law may find their ultimate sanction in the international obligations of states (as some maintain), or they may be entirely free of any conflict in sovereignty (as others maintain). Whatever may be the true view, all will agree that these problems are not regarded by governments as in any manner affecting their political integrity or safety. As one writer has said, they never trouble the external relations of states nor cause the slightest ruffle of care upon the brow of a diplomat.[6]

A discussion of principles in the elaboration of codes in this field may proceed not only without danger of suspicion but with very considerable advantage to international good will. Codification in this field does not mean uniformity of substantive law, but uniformity in the selection of law, no matter in which nation the controversy is ultimately determined. It is a form of coöperation between nations in their administration of justice, which latter, in the most enlightened concept of the state, constitutes one of its most essential functions.

Consider for a moment the administration of criminal justice. Does not the security of society in all countries suffer for lack of uniform and certain processes existing between all nations for the extradition of criminals? A codification in this field, even though resulting first in only modest accomplishments, would tend to elevate the majesty of law in all countries and draw together the governments of the world in the execution of a common purpose.

A code of private international law has been in operation among the countries of continental Europe for nearly twenty years, notwithstanding their political jealousies and the variances in their systems of legislation. The administration of justice is consequently more closely coördinated between those nations in many respects than between the States of the American Union.

The labors of the International American Conferences, beginning with the first meeting at Washington in 1889, endeavored to elaborate such a system for the Western Hemisphere. Unfortunately, our federal system of government presents constitutional difficulties in the way of the official adoption of many of these projects, but it is to be hoped that the growing commerce between the American nations will result in the elimination of these impediments, perhaps through a wise

[6]Aubry, *Jour. de droit int. privé*, 1901, p. 651.

coöperation between Federal and State legislation. The fourth conference at Buenos Aires in 1910 wisely adopted the line of least resistance in concentrating attention upon the international law of industrial property.

III

In order that the codification of the laws of peaceful commerce and intercourse should receive the widest possible *acceptance* among the nations, and not remain the result of the *à priori* reasoning of a comparatively small group of individuals, it is of the utmost importance that it take root in the practical life of the nations. The various projects should be subjected to analysis and practical criticism not only by jurists and publicists, but also by leaders in commerce and by men of affairs. National societies in the particular branch of commerce affected by each codification should be consulted and even be represented by delegates upon the drafting committees. Mr. Root has well said: "The substantial work of international codification is not merely to state rules, but to secure agreement as to what the rules are, by the nations whose usage must confirm them."[7]

The modus of codification of international maritime law as it has been proceeding for many years may well form a model for other branches. National societies of maritime lawyers, shippers, shipowners and insurers have appointed delegates to an international maritime committee, which meets at intervals for the adoption of rules in plenary sessions. The results are subsequently submitted for approval or modification to an official diplomatic congress. International treaties relating to collisions, assistance and salvage and safety at sea have thus been ratified by many of the maritime nations and are now in force. New subjects are continually being placed upon the *agenda* of the international committee, so that in time we shall doubtless have a maritime code resting upon the solid foundation of common utility.

In conclusion, may we venture to emphasize the importance of being satisfied with modest advances. It is better that a few principles be settled by official sanction than that a compendium should remain forever in the *projet* stage. Fiore,[8] himself a master of codification, has expressed it as far better to advance step by step, taking advantage of opportune circumstances, in the confident expectation that civilization,

[7] Proceedings of Amer. Soc. of Int. Law, 1911, p. 21.

[8] Droit int. codifié, 1911, p. 75.

progress and the connexity of commercial relations will gradually embrace in codified forms new matters of commercial international interest. *Pas à pas, on va bien loin.*

Résumé

I. Progress toward an international régime of law must henceforth be sought in emphasizing its obligatory character rather than in further extending its detail. The desirability of immediate codification of international law depends upon whether, in the particular branch, agencies for its enforcement already exist, or whether its interpretation in the last analysis lies only in the sovereign will of the individual nations. Where the latter is the case, as, for instance, in respect of the laws of warfare, codification should be undertaken only hand in hand with the organization of international agencies with authoritative power. The nature of law is generally dependent upon the organic character of institutions. Codification in the field mentioned, in order to be permanently effective, must receive its direction and character from the structure and *modus agendi* of the agencies intended to enforce it.

II. In those branches of international law which do not concern the rights and duties of nations *qua* sovereigns, no international agency or forum is essential to its obligatory character. Accordingly, codification may proceed there without danger of political *arrières pensées* either in elaboration or construction. Codification combines uniformity with certainty, and is particularly desirable, therefore, in the regulation of peaceful commerce between nations and in the coördination of the national systems of justice. It promotes the advent of an international basis of civilized society.

III. The modus of codification should be such as to gain for it, when once accomplished, the widest possible acceptance and the greatest possible utility. To this end it should take root in the practical life of the various nations. National scientific societies in the particular branch of intercourse should be represented by delegates upon the central drafting committees, and the result of their labors should then be submitted for modification and approval to official diplomatic congresses. The International American Conferences have performed much valuable pioneer service in the preparation of *projets* in various fields of international law. Diplomatic conferences should now be authorized to meet at intervals to recommend for adoption the more

matured portions. The *rapprochement* of the European nations upon private international law has resulted in a coöperation in the administration of justice closer in many respects than that existing between the States of the American Union. The American nations, being free from the sources of political jealousy prevalent in Europe and possessing common ideals of liberty and democracy, must ultimately find in codification a uniform and systematic basis for their international relations.

The CHAIRMAN. Gentlemen of the Congress, and ladies and gentlemen: Some of us have dreamed of an ideal statesman, and we have thought of him, first, as one who serves the public earnestly and devotedly, letting advancement take care of itself, so far as he himself is concerned. We have thought of him as a man of undoubted integrity, of wide experience, of profound scholarship, of a mind tenacious, resourceful, steadfast. We have thought of him as a man capable of leading a great legislative body so that he there established a standard of public service and public duty. We have thought of him as a man who at the head of a cabinet could administer as well as discuss, and could there leave a standard never surpassed. We have thought of him as a man who could preside over and direct a great constitutional and constructive convention in a way at least to command the admiration of his country. I am deeply honored and profoundly happy to present here one who conforms in every particular to these dreams of an ideal statesman and public man, our beloved fellow-citizen, Hon. Elihu Root.

SHOULD INTERNATIONAL LAW BE CODIFIED? AND IF SO, SHOULD IT BE DONE THROUGH GOVERNMENTAL AGENCIES OR BY PRIVATE SCIENTIFIC SOCIETIES?

ADDRESS OF HON. ELIHU ROOT,

President of the American Society of International Law

Mr. Chairman, ladies and gentlemen: I shall not at this hour detain you by any extended remarks, and I should apologize for having no prepared address. The subject is one which is very interesting to me and must be very interesting, I think, to every one who thinks about international affairs or who thinks about the possibilities of the future

of his country. Should international law be codified? and, if so, should it be done through governmental agencies or by private scientific societies? If that means should we undertake to put the law of nations into a single body which shall be the rule and guide for international relations, I think we must answer "No, that it is impossible at the present time." Mr. Field made a valiant attempt, and Bluntschli a great effort, but the formation of international law, still in its infancy, is a process only just begun, and it has not reached a point where the rules can be embodied in a code. On the other hand, codification, considered not as a result but as a process, seems to me plainly should be attempted and pressed forward and urged with all possible force.

It is curious that codification should be especially necessary in a system of law which is based upon custom more exclusively even than municipal law; but that is necessarily so in the case of the law of nations, because there are no legislatures to make the law and there are no judicial decisions to establish by precedent what the law is. One great weakness of international law has been that to ascertain what it was you have to go to text writers, and to a great variety of statements, differing, inconsistent, many of them obscure and vague, capable of different interpretations, so that the instant the occasion for the application of a law arises, there is pressed upon the conflicting or disputing nations the question as to what the law is, without any clear and definite standard from which to ascertain it.

Recent events, or rather the realization of the truth which comes from a great war in Europe, compels us to consider the great shortcomings of what we think of as international law, to consider how narrow the field which it covers, how vague and uncertain it is within that field, and how difficult it is to compel in any way a recognition of its rules of right conduct. There is but one way in which that weakness of international law can be cured, and that is by the process of codification, a process which must extend through long periods, which has been going on very gradually for many years. The Declaration of Paris was a little bit of codification. The three rules of the Treaty of Washington constituted a little bit of codification as between the United States and Great Britain, and they have been in substance accepted and adopted by the nations of Europe at The Hague. The Geneva Convention covered a certain field by codification, and the Hague Conventions a much wider field. So I say, considered as a

conclusion, there can be no codification, but, considered as a process, there must be codification, codification pressed forward and urged on by all possible means.

The very fact that there are no courts to establish precedents and no legislatures to make laws makes this necessary. All international law is made, not by any kind of legislation, but by agreement. The agreement is based upon customs, but the ascertainment and recognition of the customs is the subject of the agreement; and how can agreement be possible unless the subject-matter of the agreement is definite and certain?

I say that recent events indicate that we must press forward codification. I can go a step further than that. The changes in the conditions of the earth, the changes in international relations which have been so rapid in recent years, have outstripped the growth of international law. I think it quite right to say that the law of nations does not come so near to covering the field of national conduct today as it did fifty years ago. The development of international relations in all their variety, in the multitude of questions that arise, goes on more rapidly than the development of international law; and if you wait for customs without any effort to translate the custom into definite statements from year to year, you will never get any law settled except by bitter controversy. The pressing forward of the codification of international law is made necessary by the swift moving of events among nations. We can not wait for custom to lag behind the action to which the law should be applied.

Mr. Chairman, I want to express entire harmony with what Governor Baldwin said a few moments ago upon the other branch of this question, as to whether codification should be by governmental agencies or by private societies. It is not practicable that governments should do the threshing out of questions necessary to reach a definite statement of a conclusion. That has to be done with freedom from constraint by the private individual doing his work in a learned society or in private intercourse. I think it is not generally understood that the first conference at The Hague would have been a complete failure if it had not been for the accomplished work of the *Institut de droit international*. The first conference was called by the Czar of Russia to consider and agree upon disarmament. It was called with expressions of the most noble character which, if they could have impressed themselves upon the minds and hearts of Europe, would have rendered im-

possible the terrible sacrifices that are now going on. The conference was called for the purpose of agreeing upon disarmament, and for the purpose of averting what the Czar saw coming in the future and which has now come. But there were Powers in Europe which would not have it. They refused to enter a conference for the purpose of considering that subject. Something had to be done. Here was a conference called by this great Power about to meet, and something had to be done, so they took the accomplished work of the *Institut de droit international,* which had been threshed out through the labors and discussions of the most learned international lawyers of Europe, including most of the technical advisers of the foreign offices of Europe meeting in their private capacity, and embodied it in the conventions of the First Hague Conference. It would have been impossible for the Hague Conference to do that work or one tithe of it if they had not had the material already provided.

So I think it is quite clear that the process of codification, step by step, subject by subject, point by point, must begin with the intellectual labor of private individuals, and it must be completed by the acceptance of governments. All of the hundreds of thousands of pages that have been written upon international law by the private individuals go for nothing unless governments accept them. A wilderness of text-writers one has to wander through in endeavoring to get at what the law of nations is, and all that they wrote is of no consequence, except as it exercises a force in bringing about action and agreement by the governments of the earth. So, Mr. Chairman, this process must have both private initiative and governmental sanction.

Mr. Chairman, there is one other subject which I think we should consider in dealing with the subject of codification, and that is this: Are the small nations of the earth to continue? Is it to be any longer possible for the little people to maintain their independence? That is a serious question with many of us in this joint meeting of the Society and Subsection Six of the Pan American Congress and the American Institute. The large nations can take care of themselves by the exercise of power, if they are willing to be armed to the teeth always; but the small countries—what are they to do? There is no protection for them but the protection of law! And there is no protection in law unless the law be made clear and definite and certain, so that a great bully can not escape it without running into the condemnation of that law. So I say that every dictate of humanity should lead us to urge

forward that process by which in its better moments mankind may be led to agree to the setting up of clear and definite and distinct rules of right conduct for the control of the great nations in their dealings with the small and weak.

The presence here of Dr. Maurtua, whom it is a great pleasure for me to hail as a colleague in the Faculty of Political and Administrative Science of the University of San Marcos, at Lima, and of the distinguished Ambassador from Brazil, my old friend from Rio de Janeiro, leads me to say something which follows naturally from my reflections regarding the interests of the smaller nations. It is now nearly ten years ago when your people, gentlemen, and the other peoples of South America, were good enough to give serious and respectful consideration to a message that it was my fortune to take from this great and powerful republic of North America to the other American nations. I wish to say to you, gentlemen, and to all my Latin American friends here in this congress, that everything that I said in behalf of the Government of the United States at Rio de Janeiro in 1906 is as true now as it was true then. There has been no departure from the standard of feeling and of policy which was declared then in behalf of the American people. On the contrary, there is throughout the people of this country a fuller realization of the duty and the morality and the high policy of that standard.

Of course, in every country there are individuals who depart from the general opinion and general conviction, both in their views and in their conduct; but the great, the overwhelming body of the American people love liberty, not in the restricted sense of desiring it for themselves alone, but in the broader sense of desiring it for all mankind. The great body of the people of these United States love justice, not merely as they demand it for themselves, but in being willing to render it to others. We believe in the independence and the dignity of nations, and while we are great, we estimate our greatness as one of the least of our possessions, and we hold the smallest state, be it upon an island of the Caribbean or anywhere in Central or South America, as our equal in dignity, in the right to respect and in the right to the treatment of an equal. We believe that nobility of spirit, that high ideals, that capacity for sacrifice are nobler than material wealth. We know that these can be found in the little state as well as in the big one. In our respect for you who are small, and for you who are great, there can be no element of condescension or patronage, for that would do

violence to our own conception of the dignity of independent sovereignty. We desire no benefits which are not the benefits rendered by honorable equals to each other. We seek no control that we are unwilling to concede to others, and so long as the spirit of American freedom shall continue, it will range us side by side with you, great and small, in the maintenance of the rights of nations, the rights which exist as against us and as against all the rest of the world.

With that spirit we hail your presence here to coöperate with those of us who are interested in international law; we hail the formation of the new American Institute of International Law and the personal friendships that are being formed day by day between the men of the North and the men of the South, all to the end that we may unite in such clear and definite declaration of the principles of right conduct among nations, and in such steadfast and honorable support of those principles as shall command the respect of mankind and insure their enforcement.

The CHAIRMAN. Ladies and gentlemen, this concludes the program for the afternoon, and the meeting will stand adjourned.

(Thereupon, at 3 o'clock and 45 minutes p.m., the meeting adjourned).

ANNUAL BANQUET[1]

The Shoreham Hotel, Thursday, December 30, 1915, 7 o'clock p.m.

Hon. ELIHU ROOT, Toastmaster. Gentlemen of the American Society of International Law, gentlemen of the Pan American Scientific Congress, and our guests: I can not refrain, in opening the post-prandial exercises of this evening, from expressing the great satisfaction which I feel in taking part in the transformation of the serious and sometimes dry exercises of our meetings into this social function. It is especially agreeable to me because I cherish such rich and precious memories of hospitality received from our South American guests.

I have said many times to my own countrymen, without ever provoking resentment on their part, that I wish they could all learn a lesson in courtesy and the generosity of friendship from our brothers in South America. I should have felt that my own participation in this Congress was imperfect and lacked an important element, if I could not have met you, my old friends of South America, in this gathering, which excludes the serious and the scientific, and seeks to cultivate and satisfy only the generous sentiments of friendship.

It is with very great pleasure that I announce to you all the completion of the first step in what I believe will be a very useful and important organization for united effort on the part of representatives of all the American nations in the direction of developing and strengthening the law of nations. You will recall that up to the time when the American Society of International Law was formed there had never been such a society in this wide world. The development of the law of nations was left to governments and to private individuals and to two great organizations which were international in their character, the Association of International Law and the Institut de Droit International, both of them founded in 1873.

---

[1]The banquet on this occasion was given by the Division of International Law of the Carnegie Endowment for International Peace to the delegates in attendance upon Section Six of the Second Pan American Scientific Congress, and to the Members of the American Society of International Law, the American Political Science Association and the American Society for Judicial Settlement of International Disputes.

But the first departure in the formation of a national society of international law, a society having a double aspect, one to promote the development of the law internationally and the other to educate and instruct the people of the particular nations in their knowledge of the law of nations, was that which was set in motion by our friend, Dr. James Brown Scott, some ten years ago.

The response, which I confess was to me far beyond expectation, of the people of this country to the efforts of that organization has demonstrated the practicability of such an institution; and the rapid changes in events have demonstrated year by year more cogently the necessity of such an institution. For if democracies are to take charge of government in international affairs, as they are taking charge of government in national affairs, it is of primary, of vital importance, that the people of every democracy shall learn their duties, as well as their rights, in their relations with each other. That can not be done by the meeting of a few savants to cultivate the mystery of international law. That can be done only by broadening out into societies within which shall be gathered the men of all callings, lovers of liberty and justice, who desire to do their duty as members of self-governing democracies, not alone toward themselves and their fellows, but toward all other nations. That can only be done by the creation of a great number of competent leaders of opinion who shall direct the impulses and the action of their neighbors and their fellow citizens in the performance of the duty of administering the affairs of nations by the rule of international justice.

The demonstrated success of this new departure of the Society of International Law has resulted in the formation of similar societies in Europe, and it has resulted, through much communication, correspondence, and intercourse, through the devoted efforts of Dr. Scott, through a personal visit paid by our friend, the former Ambassador to France, Robert Bacon, in the formation of a national society of international law in every American republic. Every one has its society, prepared to perform the great duty of instructing the people of the country in their international duties and in aiding the government of their country in its international intercourse.

Yesterday there was inaugurated an institute—the American Institute of International Law—which gathered together the representatives of all these national societies, twenty-one in number, which representatives were elected by each of the national societies, whose members are

eligible to be associate members of the Institute. Through that Institute there will be hereafter an institution for the expression and effectuation of the good will and love for peace and sense of justice of all the American countries with relation to each other.

Peace we all love; good will we all entertain; friendship we all feel. The nature of man is kindly; all the peoples of the earth prefer to be friends. But good will, friendliness and good understanding, because they have no institutions through which they may receive effect, stand powerless before sinister designs, schemes of aggrandizement, and the lust for power and wealth. Here in the Americas is created an institution through which the good will and friendliness of the American peoples may have voice and effectiveness.

Before we proceed let me say that it is the custom of this Society, honored so far as one decade can produce honor, to make its dinners short. We have aimed to close our dinners as nearly at half-past ten in the evening as possible in order that various individual schemes of enjoyment may not be cut off. I feel a special duty to enforce that principle tonight because it seems to me that unless great discretion is exercised this will be for us a farewell dinner, in view of the fact that by the 8th of January, to which day the program of this Scientific Congress extends, if you keep up the pace which you have been following for the last four days, you will all be dead.

Therefore, we will be brief. We will observe the custom of the Society; and in the pursuit of that laudable purpose, and in recognition of the duty and the pleasure of hospitality, it is my very great honor and pleasure to call upon a distinguished judicial officer of the great southern Republic of Argentina to address us. I have the pleasure of presenting to you, as the first speaker of the evening, Dr. Ernesto Quesada, the President of the delegation of Argentina to the Second Pan American Scientific Congress, and one of the great and most distinguished jurists of that noble country.

Dr. ERNESTO QUESADA. Gentlemen: As a Latin American, I have been chosen to answer, in a few words, the eloquent speech we have heard. May I profit by this unique opportunity to convey the general impression of what I understand is the public opinion in our republics, regarding the important topics of the Section on International Law at this moment?

Well, we all think, in the Southern Hemisphere, that this is perchance the most solemn and important moment in the life of civilized nations and that it represents a real turning point in history. The classical international law, framed alike by facts and doctrine in the ancient nations of Europe, has in effect committed suicide. The present terrible and sad experience shows that it was a sort of compromise, accepted always with the hidden thought that when the ambitions or the interests of those nations should conflict with it, it need not be observed. We, in America, have quite different international problems and our special geographical positions give to these a characteristically continental aspect. The old European international law is bankrupt: the new American international law will step in, in its place, as representing the modern tendencies of civilization, free from the entangling traditions that guide the policy of the nations of Europe.

Therefore, in this very important moment of history, America must hold upright this part of the social sciences and remodel it in order to give it permanent life, independent of the unavoidable fetters of the secular European tradition. This is the noble task that America must take energetically in its hands, combining the efforts of more than twenty nations. The United States, as the richest and most powerful of them all, as perhaps the most important nation in the whole world, with its hundred millions of citizens and its unbounded resources, must forcefully lead the way. We all think, in both American divisions of the hemisphere, that the pivot of civilization will in the future be this country and that, as a consequence, its statesmen—I mean those of the sort of Hamilton and Webster, in the past, and, if you will allow me to express the South American opinion clearly, of Mr. Root, in the present—must be aware of the extraordinary importance of this historic moment. We all have our eyes fixed on the White House, and, with respect to international matters, we follow anxiously all its moves.

But if we can, as men in the street, be merely lookers-on, we must, as men of science and in the meetings of our technical assemblies, as the American upholders of international law, try to find a doctrinary form of solving these difficulties. And I am positive that the questions already discussed, be it in official notes or in scientific proceedings, form only a very nominal part of the tremendous number of problems that the impending peace that one day or another must put an end to the present horrible struggle, will provide. The whole

body of international law must be reshaped, and possibly that will take place in America, especially here where we are meeting. Our American Institute has, then, a most extraordinary task to perform, and must not lose a moment in scrutinizing the details of all those burning problems; science particularly is entitled to do it with the greatest freedom, trying to look on things from the noblest and highest standpoint, and to draft the possible solutions in the most impartial and generous way.

The American Institute of International Law really represents the grandest idea of the most unselfish Pan-Americanism, and we in the southern part of the hemisphere regard the men who have taken on their shoulders such a gigantic work as veritable beneficiaries of humanity. We are anxious to coöperate in their work and only ask to be called upon to participate with our best will and to put all our energy in it. We have suffered terribly by the present war; we are in fact suffering still. All the economic foundations of civilized life have been shaken or shattered in pieces. Everything must be reconstructed.

Gentlemen, let us coöperate in that work in the most friendly spirit of real and unselfish Pan-Americanism. Do not try to solve these problems exclusively from the point of view of your own country. Remember that union is always force and that if you are a giant today, we also shall surely be a giant tomorrow. Let us proceed as kindred nations that have common problems: let our intellectual representative men stand close together in this most momentous reform of the basis of the life of nations, which will be incident to the framing of the international law of the future.

I drink, then, to the success of the loyal scientific coöperation of all the three Americas.

The TOASTMASTER. We may well feel that the spirit of man has broadened, that the conception of humanity has taken hold of the civilized peoples of the earth anew, when we remember that the system of international law a few generations ago was confined to the little group of countries occupying the continent of Europe; that when a new nation was created on the continent of North America by the American Revolution, that nation was admitted into the charmed circle of the family of nations coming from the outside; that when, at the last conference at The Hague all of the American Republics took their seats

in the great council of civilization, the circle of the law of nations was, for the first time avowedly and formally enlarged to cover the American continent. And when we remember the hundreds of millions who inhabit Asia with their old and high civilization, who have also come into the circle of the family of nations, the spirit of civilization broadening with the process, we, with our little hundred millions, thinking of ourselves, absorbed in the controversies between the Powers of Europe, finding the whole horizon obscured, are apt to forget that we are but a small part of the civilized peoples of the earth; but, due to the enlarged spirit which we may call the great, new departure for the establishment of a true law of nations that shall be binding and honored and observed, we shall recall China with its vast territory and its ancient civilization and its devotion to peace—the noblest principle of mankind.

I ask you, gentlemen of the American Republics, devoted to the establishment of law among the nations, to honor the Minister from China to the United States.

Dr. V. K. WELLINGTON KOO. When I reflect that this is a banquet primarily in celebration of the Pan American Scientific Congress, and that the majority of the guests are gentlemen from South America, I feel a little concerned in finding a reason for my presence here. I can not think of any reason but one, and that is, you recall from your history that China is the nation which invented the mariners' compass, and that in the Chinese mariners' compass the needle always points to the south.

After all, I have a reason for finding an excuse for my presence here. In 1832 the Government of the United States sent an eminent American gentleman to China, Edmund Roberts, to negotiate a treaty. When he went to Canton and asked for an interview with the Viceroy of Canton, he was refused recognition for the reason that his titles were but two inches long, whereas those of the Viceroy covered at least a foot. But Mr. Roberts was very ingenious. He said he had a title that possibly was longer than that of the Viceroy, but that having just arrived on the spot, he had hardly had time to find Chinese paper and a Chinese pencil to write out all of his titles. He said that if the Viceroy really insisted he would produce his full titles. So he asked for a piece of Chinese paper and a Chinese pencil. The Chinese secretaries were somewhat amazed when

he began to write. He said, "Edmund Roberts, of Portsmouth, of the State of New Hampshire, in the United States, namely"—and then he went on to name the different States. Before he got through with naming the various States of course the paper was all covered with writing, and he asked for another piece of paper. The Chinese secretaries said, "No, that is enough. Your title is already longer and greater than the titles of our Imperial Majesty, the King."

So the objection was overcome, although Roberts afterwards stated that he fully intended to proceed, after he had finished naming the States in the United States, to give the names of the lakes, the mountains and the rivers.

But, gentlemen, you do not have to produce your titles to enable me to recognize you. I deem it a great privilege to be able to stand, on this auspicious occasion, in this distinguished assemblage of international jurists. In my opinion no study can be more fascinating and more far-reaching than that of international law. Great questions of peace or war, of the welfare of society, involving as they do sometimes millions of lives, are often settled by mere reference to that comparatively small body of rules generally known as the law of nations. Questions of momentous interest come under your observation and examination, undisturbed by excitement and free from the influence of passion.

To a Chinese scholar the study of international law is of peculiar interest. China about a thousand years before the Christian era, presented many points of similarity to the state of Europe today. In those days the central government had become so weak that the provinces had become to all intents and purposes sovereign states, and the statesmen of those states had to deal with questions arising from the formation of alliances, the keeping of treaty obligations, questions relating to the balance of power, and the like.

It would be therefore interesting to compare the present international law with the rules of intercourse which existed approximately about three thousand years ago. But, gentlemen, I am not going to detain you on that historic subject. Let me avail myself of this opportunity to mention to you, in this connection, that the honor of introducing a systematic study of international law is due to Dr. William D. Martin, an American missionary, formerly president of the college in Pekin. His translation of Wheaton's "International Law" is still being used very extensively in China.

I am glad to announce that very recently a society similar to the American Society of International Law has just been formed in Pekin by a few Chinese scholars under the auspices of the Minister of Foreign Affairs. They plan to publish a journal which will be devoted especially to the extensive discussion of this important subject.

There are still some who would refuse to recognize international law as law at all; but I believe this view is shared by very few today. It is quite true that there have been times in different parts of the world, in the Far East as well as in the West, when the efficacy of international law as a bulwark of international justice has been tested and found wanting; but, gentlemen, I do not consider that that is the fault of the law itself. That is the fault of the age in which we live, an age in which nations are still suspicious of each other and hesitate to come together and coöperate in the creation and organization of some common body for the enforcement of the law of nations.

The mere fact that international law is occasionally violated is no reason for denying its existence, just as the occasional success of a criminal in evading the municipal law is no reason to deny the existence of the municipal law.

The purpose of all is to find an effective means for the enforcement of the law of nations. This is certainly a difficult task, a task which will probably take years, and possibly decades, but neither the time nor the difficulty should discourage us from our efforts to secure its attainment.

If we look back to the time of Grotius—or still nearer—if we look back a century ago and then compare it with today, we can not but realize the wonderful progress that has been made in the field of international law. Not to mention others, the conferences of Vienna and of Paris, the two Hague conferences of 1899 and 1907, have given us great contributions to the subject of international law; while the decisions which have been rendered by the Permanent Court of Arbitration within the few years since its establishment have given us ample evidence of what can be accomplished by intelligent, persistent and organized effort.

Gentlemen, I am very confident, if we can judge of what is to come by what has gone by, that we have every reason to think that the future of international law is as bright and as promising as it can be.

As you will notice by what I have said, I cherish the very strongest hopes for the future development of international law as the result

of your past study in this field, and I shall look with confidence for even greater results from your study of this important subject, invigorated as it must have been by the interesting meetings of the Pan American Scientific Congress now being held in this city of Washington.

The TOASTMASTER. His Excellency, Doctor Koo, seems to me to have given to us not only a most charming illustration of intellectual acumen and catholic understanding of our western world, but also an exhibition of something that we shall need very much if we are to play our part in the performance of the great task that will await the world when this cruel war is over—humility; humility—a realization of how small a part we really play in the time-long affairs of this great world.

It is my great pleasure to introduce to you as the next and last speaker of this evening the Honorable Charles H. Sherrill, formerly American Minister to Argentina, who has that sympathetic appreciation of our brethren in the Southern Hemisphere which comes from life among them, from knowledge of them, from affection for them, and from the obligations of friendship and hospitality.

Hon. CHARLES H. SHERRILL. Mr. Toastmaster, Mr. Secretary of State, fellow guests and gentlemen: I am going to ask you to make a very rapid trip, if you will, from eight thousand years ago until tomorrow. No one appreciates more than I the opportunity of speaking to such an audience as this, which calls for brevity, and brevity means conciseness; for that reason, with your permission, I will read what I have to say.

Much is heard nowadays of two shibboleths, "America First" and "Safety First," generally assumed to be hopelessly incompatible. Let us reason together and see if we may not evolve a symmetrically complete foreign policy which will not only conserve the fine patriotism of "America First" but also square with the sound common sense of "Safety First." I believe that in this endeavor we have ready to our hand a great international force which shall not only advance the world position of all the Americas, but also will assure to their chilren's children the blessings of peace. That force is Pan-Americanism. To this audience it is not necessary either to explain or to eulogize Pan-Americanism, for if you were not already its staunch adherents you would not be here. You know its history and its upward progress,

you know where it stands today. My purpose tonight is to attempt to outline a plan, which, based upon the firm foundation of the Pan-Americanism of today, can utilize its force to guarantee the tomorrow of the Western Hemisphere. As I look out into the future this plan shapes itself to me as a complete triangle, a triangle for peace, whose base is an already operative system of joint mediation in all Pan American misunderstandings. The easterly side of the triangle is to eliminate friction with European Powers and thus keep us from becoming embroiled in their political disputes whose settlement lies beyond our arranging. The westerly side of the triangle shall safeguard peace on the Pacific by inoculating our policy there with the "stay at home and mind your own business" vaccine of the Monroe Doctrine. What is good medicine for us to give others ought to be good for us to take. If it shall seem best to set up this triangle, then with a policy so productive of peace at home and protection from attack from across both the Atlantic and Pacific Oceans, we of the New World may proceed calmly to the development of our untouched resources, a development which is to be the world's next great step forward.

Now let us consider this triangle and begin by a brief reference to its base, which fortunately is already securely established.

As a result of my two years stay in South America, with the facilities it gave for studying the point of view not only of the people in their everyday life, but also of the political and intellectual leaders of twenty republics assembled at several international conferences, I ventured to formulate a suggestion in January, 1913, that whenever international difficulties arose in this hemisphere the United States should always invoke the coöperation of one or more of our sister republics so that we might benefit from getting their Latin point of view of the problem, something we Anglo-Saxons had never done. Although this suggestion was unanimously approved by the three hundred Latin American newspapers to which it was cabled, so novel was it considered by our press as to receive much criticism, chiefly because it was pronounced unpractical. That was less than three years ago, and now it is an accepted system for adjusting interrepublic disputes that ought always to preserve peace among us, because now at last the Anglo-Saxon studies the viewpoint of the Latin so that the Latin no longer need distrust the Anglo-Saxon. Furthermore, it has made the Monroe Doctrine a continental one, so that our Latin friends no longer distrust the big brother of the North. It has justified itself

by the successful prevention of war between Mexico and the United States, effected by the joint mediation of Argentina, Brazil and Chile, and again and more recently (thanks to the present Administration) by the useful results of the joint mediation in the Mexican difficulties of Argentina, Bolivia, Brazil, Chile, Guatemala, the United States and Uruguay. This second operation is an improvement on the first because it strikes the true democratic note by rating the smaller nations as of the same importance as larger ones. So much for the base of our triangle, now securely laid with the cement of mutual respect for the other man's viewpoint, formerly so grievously lacking.

Now for the easterly side of our triangle. What is the danger which ever since the birth of our republic has always threatened us, the danger of which Washington warned, and against which Monroe spoke out to protect us? What is it but the risk of becoming embroiled in European politics and its quarrels. To prevent this, Monroe launched his doctrine against a future colonization by any European Power anywhere in the New World. He and our forebears thought this enough. They expressly refrained from interfering with existing European colonies here, and yet from the day Monroe sent his message to Congress until now there has never been a time when the crisis they all dreaded was so real and threatening as when in 1895 President Cleveland spoke out so splendidly to save Venezuelan territory from the encroachment of an English colony which had long existed. European colonies in this hemisphere tend to embroil us in European politics, and, therefore, even existing ones should be released from their European owners, and dangers like the Venezuela episode of 1895 eliminated for good and all. All the territory of all the Americas should be freed from European domination. This suggestion was made by me this autumn before the University of Buffalo, and editorial comment thereon was no more favorable than that upon my joint mediation suggestion of January, 1913, the criticism, curiously enough, again being that the idea was not practical. Let me show you that in this regard, just as in that of joint mediation, the advanced thought of Latin America leads that of our country. Just a year ago, after the naval battle off the Falkland Islands, the nations of South America united in a protest against such use of the waters of the New World and urged the neutralization of all Pan American waters. Although that joint South American protest of December, 1914, did not arouse much interest in this country, would it not have been vastly different if,

instead of a naval battle off the English base on the Falkland Islands, it had taken place off their base in British Honduras right by the mouth of our canal! Is it not obvious that the only way to rid us of the risk of future European battles on our side of the world is to eliminate all their naval and military bases? Suppose that in this war, England had not swept the seas of German shipping, would not Germany have attacked England's colonies over here, just as England has attacked German colonies in Africa, and in that case, would it not have been difficult for every Pan American republic to have escaped being embroiled!

With those who say that European colonies here are better off than they would be if free, I have no patience. Do such people know that in all the three Guianas, a territory the size of Ohio, Indiana, Illinois and Iowa, there are less than 200 miles of railroad? Compare that with the 588 miles in Venezuela, next adjoining them, or the 614 miles in Colombia, and also compare the poor school facilities or none at all that characterize the three Guianas with the 1,700 schools of Venezuela or the 5,000 of Colombia. In British Guiana, the most advanced of the three Guianas, there are 10,000 whites, and 126,000 East Indian coolies and 115,000 negroes, all brought there for what purpose? To help advance the civilization of this hemisphere? or to exploit the land for their European masters? This East Indian coolie traffic was started in 1838 by John Gladstone, father of the great English Prime Minister. The French have brought many Siamese and Chinese into French Guiana, and the Dutch many Javanese into Dutch Guiana. French Guiana is chiefly known for its extensive penal settlements, in one of which Dreyfus languished so many hideous years. The foreign trade of the French Islands has steadily dropped, the annual totals from 1882 to 1907 showing for Martinique a fall from 67 to 34 million francs, and for Guadeloupe a fall from 68 to 29 million. The population of the Danish West Indies steadily decreased from 43,000 in 1835 to 31,000 in 1901.

In passing, let us remark that Canada stands in a very different case from all other European possessions here, because she is already self-governing, speaks the tongue of the mother country, and could have her entire freedom at any moment that she desired it. This is not true of the other colonies.

Just as the Mexican difficulty marked the right moment to launch the joint mediation suggestion, so I believe this to be the opportune

time to initiate the campaign for freeing all these colonies, because never before have the European governments owning them been in a position so to welcome the cash payment that we should be willing —nay, glad to offer for such freeing of Pan American territory. Such an altruistic act would ring especially true as coming from a nation that had spent millions in freeing Cuba. Furthermore, I am sure that many of the South American Powers would insist in participating with us in paying the few millions which the freedom of these colonies would cost. I say "few millions" advisedly, because almost none of these colonies are paying ones, while as naval bases they would only have value against us, a hypothesis too ridiculous to be figured in their sale price. Let us by all means complete the Monroe Doctrine, so that by eliminating the danger from existing as well as future European colonies we may achieve the peaceful seclusion we have sought ever since the days of Washington down to the South American plea of last December for the neutralization of Pan American waters. Thus will we erect on the firm base of assured peace within the New World the easterly side of the triangle to protect us from friction with Europe.

And now to complete that triangle by adding its westerly side, to make sure of a continuing peace on the Pacific. I think perhaps this is the first time that Pan-Americanism has turned its eyes in that direction. Unless I am mistaken, this completing side of the triangle is much more easily constructed and put into place than either of the other two. It all depends on whether or not we are willing ourselves to act as, through the Monroe Doctrine, we ask others to do. The basis of that Doctrine is the idea of "stay at home and mind your own business." For nearly a century we have preached that to all the outside world in regard to this hemisphere, but now we find that peace never can be assured on the Pacific until our sister nation Japan becomes convinced that what we preach on the eastern shores of that ocean we are willing to practice on the western. There is no use disguising the fact that many Americans feel that we are and ought to be the natural protector of China against what they call Japanese aggression. Until we definitely exorcise that international bogey we will never gain that complete confidence of Japan which will spell continued peace on the Pacific. We have a reasonable right to curb any and every outside nation from intruding on this side of the Pacific, but absolutely no right to interfere with their expansion on its other side, just

so long as it does not interfere with our treaty rights under "the most favored nation clause." Our efforts in China should be confined to what is outlined in the admirable notes of November 30, 1908, exchanged between Elihu Root, when Secretary of State, and Baron Takahira, the Japanese Ambassador: "supporting, by all pacific means at their disposal, the independence and integrity of China and the principle of equal opportunity for commerce and industry of all nations in that Empire." Further than this we should neither go nor wish to go.

Let us consider from what sources spring this dangerous nonsense of our being the natural protector of China. One of its roots runs back into the distant past, to the days when the New England clipper ships traded so profitably with China, and brought back such cupidity-stirring tales of the fabulous wealth of the Far East. Thanks to that foolish legislation, the Reciprocity Act of 1828, which took away protection from our merchant marine, our ships disappeared from the seas, but the memory of those Chinese profits and the stories of Chinese commercial possibilities persisted. But what are the cold facts? The foreign trade of Latin America is eighteen times greater than that of China, and the foreign trade of Argentina alone almost equals that of China and Japan put together, and furthermore it is increasing at a greater rate.

But the chief cause of this "natural protector of China" nonsense is the very mistaken impression prevailing in our country concerning the "Open Door" in China which it is believed Mr. John Hay arranged by his clever series of communications sent September 6, 1899, to France, Germany, England, Russia, Italy and Japan, through our diplomatic representatives there, making an identical proposal to each, which he clinched by reporting to each of those governments March 20, 1900, that all the others had accepted his proposal. It was a brilliant diplomatic stroke and was supposed at the time not only to have opened the door in China, but to have fixed it open for all time. But what happened the very first time we started to use that door? The third clause of the Hay proposal dealt especially with the railroad situation in China, and yet when Mr. Knox, as Secretary of State, attempted to effect the neutralization of the Manchurian Railways, he found the open door locked and bolted. It is to be hoped that we shall always maintain our treaty rights in China along with those of other nations, but those who still believe that we have an open door there which will give us special privileges are dreaming an empty dream.

Let them awake to the fact that because the Monroe Doctrine forbids foreign intermeddling in the Western Hemisphere we should not intermeddle on the Asiatic side of the Pacific.

And this brings us to our one most vexed problem—the Philippines, and what to do with them. We hold those islands as the chance result of war, and not because of a lust for territory or any desire for a foothold in the Orient. But what is the Japanese viewpoint? How would we feel if Japan came into possession of some of the West Indian islands?—would it not affront the Monroe Doctrine? Why then should we be good Pan Americans only in the Caribbean Sea and not practice the same stay at home and mind your own business policy in the Orient? It is but natural for the Japanese to wonder how we can continue persistently to object to foreign colonization in the Western Hemisphere while we are actually in possession of large colonies near the coast of Asia. This Philippine problem is not at present being met in a way that is satisfactory to any of us. Why can not it be met so frankly that out of its very difficulties a valuable end can be evolved, just as from the Mexican imbroglio there emerged the Pan American mediation machinery, of so great value already, and certain to prove more valuable as it develops. Our possession of the Philippines does not true up to the underlying ideas of the Monroe Doctrine. But neither does the possession by Denmark, Holland, France and England of colonies in this hemisphere! Why not set one of these discordant facts off against the other, and trade the Philippine Islands for all European possessions to the south of us, and then turn the Guianas and British Honduras into free republics, return the Falkland Islands to Argentina, and take under our flag the West Indian Islands, so important to the defense of the Panama Canal. Thus at one step would we eliminate Japanese distrust caused by our holding the Philippines, honorably release us from the responsibility for those distant islands, complete the protection from European entanglements initiated by Monroe's protest against additional European colonization, and, finally, free us from European military bases near the Panama Canal.

This reference to the Canal leads me to say that in regard to that great waterway a state of affairs exists which also affronts the Monroe Doctrine and sorely needs readjustment, which readjustment should be included as part of our sale price of the Philippine Islands to our European friends.

We built the Canal with our own money and brains, after the French had tried in vain to do so. The only nation that contributed

anything to this great enterprise was England, and all that she contributed was her permission that we build it, at the same time restricting us by means of the Hay-Pauncefote Treaty in our operation of it. The Clayton-Bulwer and the Hay-Pauncefote Treaties together form a monument to the superiority of English over American diplomacy and at the same time constitute an affront to our national dignity and to the territorial integrity of this hemisphere. That veteran diplomatist, General John W. Foster, once Secretary of State and father-in-law of our present Secretary, holds that the Clayton-Bulwer Treaty "marks the most serious mistake in our diplomatic history, and is the single instance of a tacit disavowal or disregard of the Monroe Doctrine by the admission of Great Britain to an equal participation in the protection and control of a great American enterprise." Mr. John Hay, when Secretary of State, did his best to correct this state of affairs, and the result of his efforts was the first Hay-Pauncefote Treaty, which was not approved by the United States Senate. By this one act alone the Senate amply justified its possession of the power granted it by our Constitution to accept or reject treaties. Mr. Hay renewed his efforts and negotiated a second treaty, which was approved by the Senate as the best that could be hoped for at the time. We must live up to that treaty until such time as England for compensation consents to its annulment. England now controls the Suez Canal and, although much French money went into its construction, still England also has large sums invested therein. But she managed to have us build the Panama Canal without a dollar of English capital being locked up therein. The French were outgeneraled by the English in the Suez Canal matter, but not so badly as we were in that of the Panama Canal. England can build and run ships cheaper than any nation, and therefore just so long as she can enforce equal canal tariffs she is safe in her shipping supremacy. We are all unwilling to lower to her level the wages paid those who build and navigate our ships, because it would reduce our workmen and sailors to a scale of living repugnant to all friends of American labor. We should insist upon a free hand in the Panama Canal, so that by preferential rates we can protect our own shipping and, in my own opinion even more important, we can protect that of our sister republics who share in the responsibilities of Pan-Americanism.

The annulment of the Hay-Pauncefote Treaty should be made part of the sale price of the Philippine Islands.

So, gentlemen, is completed the drawing of the Pan American triangle of peace. Perhaps you will see it only as the dream of a dreamer, three dreams rolled into one. To this let me reply that one of the three dreams came true, so perhaps the others may also contain sterner stuff than "dreams are made of."

In any event, we will all agree that Pan-Americanism is the lineal descendant of the Spirit of '76, whose source was acknowledged by those armed Americans who at daybreak knelt in prayer on Cambridge Green before marching out to defend Bunker Hill against the assault of European domination.

The TOASTMASTER. Gentlemen, we have the great honor and pleasure of having at this table tonight the distinguished and able Secretary of State of the United States, the Honorable Robert Lansing, upon whose learning as an international lawyer, and upon whose poise of character and serene strength, the people of our country justly rely. He is here under a safe conduct, and is, therefore, by all the faith of treaties, relieved from the necessity of making any observations upon the remarks which have recently fallen from Mr. Sherrill.

Now, as we approach the conclusion of this festival, I shall ask you to join me in several appropriate toasts.

First, rise and drink to the President of the United States.

(The guests arose and drank a toast to the President of the United States.)

And now rise again, and drink to a toast to which I know every heart will respond in consonance with the intelligence of every guest at this board—the American Republics, one and indivisible, forever.

(The guests arose and drank a toast to the American Republics.)

And yet, again, join in a toast of broader import, to humanity, the universal concert of civilized nations, for the progress of civilization and the reign of peace in the world—to humanity, which the religion we all profess aims to make perfect—to peace and good will.

(The guests arose and drank a toast to humanity.)

Gentlemen, in behalf of the American Society of International Law, I thank you for honoring us by your presence this evening, and declare this meeting to be adjourned.

LIST OF MEMBERS

HONORARY MEMBERS

Holland, Thomas E., Oxford University, Oxford, England.
Lammasch, Heinrich, Salzburg, Austria.
Nys, Ernest, 39 Rue St. Jean, Brussels, Belgium.
Renault, Louis, 5 Rue de Lille, Paris, France.

LIFE MEMBERS

Bacon, Robert, Westbury, L. I., N. Y.
Bacon, Robert L., 1 Park Ave., New York City.
Balch, Thomas Willing, 1412 Spruce St., Philadelphia, Pa.
Baldwin, Simeon E., 69 Church St., New Haven, Conn.
Barbosa, Ruy, Rio de Janeiro, Brazil.
Drago, Luis M., 761 Avenida de Mayo, Buenos Aires, Argentina.
Hawes, Gilbert Ray, 120 Broadway, New York City.
Jackson, John B., U. S. Despatch Agency, 4 Trafalgar Square, London, England.
Johnson, Alba B., 500 North Broad Street, Philadelphia, Pa.
Kodera, Kenkichi, 3 Nakayamatedori-Gochome, Kobe, Japan.
Koo, V. K. Wellington, Chinese Legation, Washington, D. C.
Liang-Cheng, Chentung, 33 Robinson Road, Hongkong, China.
Marshall, Louis, 30 Broad Street, New York City.
Pardo, Felipe, care of Peruvian Legation, Washington, D. C.
Portela, Epifanio, Argentine Legation, Rome, Italy.
Potter, William, Chestnut Hill, Philadelphia, Pa.
Sammons, Thomas, American Consul General, Shanghai, China.
Scott, James Brown, Carnegie Endowment for International Peace, Washington, D. C.
Straus, Oscar S., 5 W. 76th St., New York City.
Warner, James Harold, Calle Espiritu Santo No. 2, Mexico, D. F., Mexico.
Wetmore, George P., 1609 K St., Washington, D. C.
Wilson, Burton W., La Mutua, Mexico City, D. F., Mexico.

ANNUAL MEMBERS

Abbott, Lyman, The Outlook, 287 4th Avenue, New York City.
Acuna, Carlos, 2017 Massachusetts Avenue, Washington, D. C.
Adams, Charles Hall, 222 State Street, Boston, Massachusetts.
Adams, Edward B., Social Law Library, Boston, Massachusetts.
Adams, George E., 407 The Temple, 108 S. La Salle Street, Chicago, Illinois.
Adams, Joseph, Union Stock Yards, Chicago, Illinois.
Adamson, James, Victoria University College, Wellington, New Zealand.

Agar, John G., 31 Nassau St., New York City.
Albertini, O. D., Secretaria de Justicia, Habana, Cuba.
Alessandro, Arturo, Delicios 1158, Santiago, Chile.
Alfaro, Ricardo J., Plazuela de Alfaro, 198, Panama, Panama.
Allen, Freeman H., Colgate University, Hamilton, New York.
Allen, Lafon, Lincoln Bank Building, Louisville, Kentucky.
Allin, Cephas D., University of Minnesota, Minneapolis, Minnesota.
Allmuth, F. A., 834 13th Street, N. W., Washington, D. C.
Almela, Federico Rodriguez, Calle de M. H. del Pilar 1134, Manila, P. I.
Alvarez, Alejandro, Ministry of Foreign Affairs, Santiago, Chile.
Ames, Charles W., West Publishing Co., St. Paul, Minnesota.
Ancizar, Roberto, Colombian Legation, 1319 K Street, Washington, D. C.
Anderson, Chandler P., 15 Broad Street, New York City.
Anderson, Henry W., Mutual Building, Richmond, Virginia.
Anderson, Luis, San José, Costa Rica.
Anderson, Rondo W., Grantsville, Utah.
Andrade R., Daniel, Carrera Garcia, Quito, Ecuador.
Andrade, José Julian, Quito, Ecuador.
Andrews, Arthur Irving, Tufts College, Massachusetts.
Andrews, George Frederick, 589 Norfolk Street, Mattepan, Massachusetts.
Andrews, Wm. Whiting, care Department of State, Washington, D. C.
Angell, James B., Ann Arbor, Michigan.
Angulo, Rafael Maria, Amargura 77, Habana, Cuba.
Aparicio, A. Aguirre, Legation of Salvador, Lima, Peru.
Aquino, E. Gagliardone, Belgrano 960, Buenos Aires, Argentina.
Arango, José Miguel, Calle 8a, Núm. 100, Bogotá, Colombia.
Arazza, Antonio J. de, Reina 95 altos, Habana, Cuba.
Arbelaiz, Manuel, Calle Andes 1370, Montevideo, Uruguay.
Arias, Harmodio, Panama, Panama.
Arismendi, José Loreto, Oeste 3, Núm. 4, Caracas, Venezuela.
Armour, Allison V., Room 5023, 1 Madison Avenue, New York City.
Armour, George A., Princeton, New Jersey.
Armour, Norman, Princeton, New Jersey.
Armstrong, S. T., Hillbourne Farms, Katonah, New York.
Arnett, L. D., West Virginia University Library, Morgantown, W. Virginia.
Arnold, Benjamin Walworth, 465 State Street, Albany, New York.
Atkins, Edwin F., 10 Broad St., Boston, Massachusetts.
Atkisson, Horace L. B., Fendall Building, John Marshall Place, Washington, D. C.
Austin, W. C., Eldorado, Oklahoma.
Autran, Frederic C., 62 Rue Montgrand, Marseilles, France.
Aymar, Francis W., New York University, New York City.

Babcock, Louis Locke, 814 Fidelity Building, Buffalo, New York.
Bacon, Selden, 49 Wall Street, New York City.
Bagby, C. C., Danville, Kentucky.

Baily, Joshua L., 32 South 15th Street, Philadelphia, Pennsylvania.
Baldwin, John C., Garden City, Long Island, New York.
Baldwin, Joseph C., Jr., 84 William Street, New York City.
Baldwin, Walter A., 51 Brattle Street, Cambridge, Massachusetts.
Baldwin, William H., 1415 21st Street, Washington, D. C.
Baltazzi, E. G. S., 12 Grove Street, Winchester, Massachusetts.
Bance, J. B., Caracas, Venezuela.
Bancroft, Edgar A., 206 La Salle St., Chicago, Illinois.
Barber, Orion M., 1429 New York Avenue, Washington, D. C.
Barbosa, Ruy, Rio de Janeiro, Brazil.
Barclay, Arthur, Monrovia, Liberia, W. C. Africa.
Barclay, Colville, British Embassy, Washington, D. C.
Barclay, Thomas, 13 Old Square, Lincoln's Inn, W. C., London, England.
Bard, Harry Erwin, 407 W. 117th Street, New York City.
Bardel, William, Ponta Delegada, Saint Michaels, Azores.
Barilari, Atilio Daniel, Canning 2828, Buenos Aires, Argentina.
Barlow, Burt E., The Old Brick, Coldwater, Michigan.
Barnett, James F., 126 N. Lafayette Street, Grand Rapids, Michigan.
Barnhart, Paul, Casilla 242, Coquimbo, Chile.
Barratt, J. Arthur, 3 Temple Gardens, London, England.
Barreto, Anselmo V., Calle de Correo, 110 Lima, Peru.
Barreto, José Maria, Legation of Peru, La Paz, Bolivia.
Barrett, John, Director, Pan American Union, Washington, D. C.
Barstow, George Eames, Barstow, Texas.
Bartlett, Philip G., 62 Cedar Street, New York City.
Barton, James L., Newton Centre, Massachusetts.
Bassett, A., 22 Museum Road, Shanghai, China.
Baxter, Wyllys Pomeroy, 333 W. 86th Street, New York City.
Bayard, J. Wilson, Land Title Building, Philadelphia, Pennsylvania.
Beale, William G., 30 East Burton Place, Chicago, Illinois.
Beals, Charles E., Secretary of Chicago Peace Society, 30 North La Salle Street, Chicago, Illinois.
Beci, Lorenzo D., Habana 43, Habana, Cuba.
Bedford, J. Claude, Girard Building, Philadelphia, Pennsylvania.
Beeber, Dimner, 632 Land Title Building, Philadelphia, Pennsylvania.
Beichmann, F. V. N., Drontheim, Norway.
Belden, Charles F. D., Librarian, State Library of Massachusetts, State House, Boston, Massachusetts.
Belden, Perry, American Legation, Santiago, Chile.
Bell, James D., 91 Rugby Road, Brooklyn, New York.
Bell, Thomas S., 825 Title Insurance Building, Los Angeles, California.
Beller, Frederick F., 235 First Street, N. E., Washington, D. C.
Bello, Ricardo Montaner, Huerfanos 882, Santiago, Chile.
Belt, Jorge Alfredo, Lonja del Comercio, Habana, Cuba.
Benard, Alfredo Gonzalez, Apartado 166, Cardenas, Cuba.
Bennett, Ira E., Washington Post Building, Washington, D. C.

Benton, Josiah Henry, Ames Building, Boston, Massachusetts.
Bernardini de la Huerta, Tómas, Duke Street, 7, Guayama, Porto Rico.
Berry, Walter V. R., Colorado Building, Washington, D. C.
Berwick, Edward, 343 Ocean View Avenue, Pacific Grove, California.
Bezada, Severiano, Núm. 923 girón Lampa, Lima, Peru.
Bidau, Eduardo L., Facultad de Derecho y Ciencias Sociales de Buenos Aires, Argentina.
Bien, Zue Sun, Bank of China, Peking, China.
Bijur, Nathan, 160 West 75th Street, New York City.
Bingham, Hiram, Drawer A. Yale Station, New Haven, Connecticut.
Bishop, A. L., Bartlett, Nebraska.
Blackwell, George E., 63 Wall Street, New York City.
Blair, Henry P., Colorado Building, Washington, D. C.
Blair, John S., 1416 F Street, Washington, D. C.
Blakeslee, George H., Clark College, Worcester, Massachusetts.
Bliss, Robert Woods, American Embassy, Paris, France.
Blount, Walter E., Bluemont, Virginia.
Blumenthal, Maurice B., 35 Nassau Street, New York City.
Bocanegra, Angel Maria, San José, Costa Rica.
Bodine, William W., Villa Nova, Pa.
Bogert, Henry L., 99 Nassau Street, New York City.
Bonham, M. L., Anderson, South Carolina.
Borchard, Edwin M., Library of Congress, Washington, D. C.
Borda, F. de, Bogotá, Colombia.
Bordwell, Percy, 602 North Dubuque Street, Iowa City, Iowa.
Borel, Eugene, Rue du Rhone 2, Geneva, Switzerland.
Borges, Esteban Gil, Caracas, Venezuela.
Borja, Enrique, Legation of Salvador, Washington, D. C.
Boutell, R. S. G., 412 5th Street, Washington, D. C.
Bouvé, Clement L., Union Trust Building, Washington, D. C.
Bowen, Herbert W., Woodstock, Conn.
Bowers, John M., 31 Nassau Street, New York City.
Bowman, Charles W., care Brown, Shipley & Co., 123 Pall Mall, London, England.
Boyd, Jorge E., Panama, Panama.
Boyett, S. E., McLean, Texas.
Bradford, Edward G., Wilmington, Delaware.
Bradley, John J., Fort William H. Seward, Alaska.
Bradley, Phillips, Lincoln, Massachusetts.
Bradley, William Harrison, Ridgefield, Connecticut.
Brainard, John M., 122 Genesee Street, Auburn, New York.
Brainerd, Ira H., 92 William Street, New York City.
Branch, Ben, Nesquehorning, Pa.
Brand, Charles S., 569 Fifth Avenue, New York City.
Braunling, G. A., 132 Front Street, New York City.
Breimeier, F. W., University of Pennsylvania, Philadelphia, Pa.

Brewer, D. Chauncey, 113 Devonshire Street, Boston, Massachusetts.
Briceño, A. M. Delgado, Caracas, Venezuela.
Bridgeman, R. L., 90 Hancock Street, Auburndale, Massachusetts.
Brinton, Jasper Yeates, 1935 Commercial Trust Building, Philadelphia, Pa.
Bristol, John W., 42 Church Street, New Haven, Connecticut.
Brito, Theotonio Raymundo, 2 Praia de Flamingo, Rio de Janeiro, Brazil.
Britton, Alexander, 1512 H Street, N. W., Washington, D. C.
Brooks, Charles T., 8205 Euclid Avenue, Cleveland, Ohio.
Brown, Edward Osgood, Appellate Court, Ashland Block, Chicago, Illinois.
Brown, Edw. T., Wolcott, New York.
Brown, Marshall S., New York University, New York City.
Brown, Philip M., Princeton University, Princeton, New Jersey.
Browne, Evans, Wilkins Building, Washington, D. C.
Bruce, Helm, Louisville, Kentucky.
Bruenn, Bernard, 714 Hennen Building, New Orleans, Louisiana.
Brun, M. T., Handelshochschule, Munchen, Germany.
Brunet, Gaston, 22 Avenue de la Grand Armée, Paris, France.
Bruno, Richard M., 20 Broad St., New York City.
Bryan, Charles Page, University Club, Chicago, Illinois.
Bryce, James, Rt. Hon., Hindleap, Forest Row, Sussex, England.
Buckhous, M. G., University of Montana Library, Missoula, Montana.
Bunn, C. W., Northern Pacific R. R. Co., St. Paul, Minnesota.
Burke, Thomas, Seattle, Washington.
Burleigh, Geo. W., 52 Wall Street, New York City.
Burlingham, Charles C., 27 William St., New York City.
Burnham, George, Jr., 1421 Chestnut Street, Philadelphia, Pennsylvania.
Burton, Theodore E., Cleveland, Ohio.
Busser, Ralph Cox, American Consulate, Trieste, Austria.
Bustamente, Antonio S. de, Aguacate 128 Esq. A. Muralla, Apartado 134, Habana, Cuba.
Butler, Charles Henry, 1535 I Street, Washington, D. C.
Butler, Charles Marshall, 1535 I Street, Washington, D. C.
Butler, Nicholas Murray, Columbia University, New York City.
Butler, William Allen, Jr., 54 Wall Street, New York City.
Butte, George C., 2504 Rio Grande Street, Austin, Texas.
Butzel, Leo M., 66 Pallister Avenue, Detroit, Michigan.
Buzzati, G. C., Via S. Marco 12, Milano, Italy.
Byrne, James, 24 Broad Street, New York City.

Cabot, Frederick P., 53 State Street, Boston, Massachusetts.
Cachard, Henry, 39 Boulevard Haussmann, Paris, France.
Calhoun, C. C., Evans Building, Washington, D. C.
Calhoun, William J., 940 The Rookery, Chicago, Illinois.
Callahan, J. M., University of West Virginia, Morgantown, West Virginia.
Callorda y Acosta, Pedro, Coloma 1054, Montevideo, Uruguay.
Camacho, Vicente Olarte, Calle 13, No. 168, Bogotá, Colombia.

Campbell, Ira A., 1107 Merchants Exchange Building, San Francisco, Cal.
Campbell, R. Granville, Washington and Lee University, Lexington, Virginia.
Canada, William W., 326 South E Street, Winchester, Randolph Co., Indiana.
Canfield, George L., Penobscot Building, Detroit, Michigan.
Cantilo, José Luis, Paraguay 920, Buenos Aires, Argentina.
Carnegie, Andrew, care of Home Trust Co., Hoboken, New Jersey.
Carpenter, W. Clayton, 902 Hibbs Building, Washington, D. C.
Carr, Wilbur J., Department of State, Washington, D. C.
Carstairs, C. Haseltine, 556 Fifth Avenue, New York City.
Cartaya, Enrique Hernandez, Cuba No. 48, Habana, Cuba.
Carter, John Ridgley, care J. P. Morgan & Co., New York City.
Cartwright, Otis T., 2 Jackson Place, Washington, D. C.
Case, Norman Stanley, P. O. Box 1143, Providence, Rhode Island.
Castillo, Matias Z., Roatan, Republica de Honduras.
Castrillo, Salvador, Managua, Nicaragua.
Castro, Jacinto R. de, 19 de Marzo No. 74, Santo Domingo City, Dominican Republic.
Castro, Juan Pedro, Avenida 8 de Octubre, 93, Montevideo, Uruguay.
Castro, Ramon Alcerro, Comayagua, Honduras.
Catellani, Enrico, University of Padua, Padua, Italy.
Cestero, Julio M., Santo Domingo City, Dominican Republic.
Chaffee, Zechariah, Jr., 15 Westminster Street, Providence, Rhode Island.
Chamberlain, J. P., Hotel Gotham, New York City.
Chandler, Alfred D., 411 Washington St., Brookline, Massachusetts.
Chandler, Charles Lyon, 322 James Building, Chattanooga, Tennessee.
Chandler, Lloyd H., U. S. S. New Hampshire, care Postmaster, New York City.
Chandler, William E., Waterloo, New Hampshire.
Chang Lau-Chi, Chief Inspectorate of Salt Revenue, Peking, China.
Chang, Y. C., Wai Wu Pu, Peking, China.
Chapin, Frederick E., 1410 H Street, Washington, D. C.
Chase, Benjamin F., American Consul, Fiume, Hungary.
Chester, Alden, Albany, New York.
Chester, Frank Dyer, 541 Boylston Street, Back Bay, Boston, Massachusetts.
Chilton, Robert S., Jr., Cobourg, Ontario, Canada.
Chirurg, M., 532 Warren Chambers, Boston, Massachusetts.
Choate, Charles F., Jr., 60 State Street, Boston, Massachusetts.
Choate, Joseph H., 60 Wall Street, New York City.
Choate, William G., 40 Wall Street, New York City.
Church, Melville, 908 G Street, Washington, D. C.
Cintrón, Eduardo Capó, Abogado Notario, Utuado, Porto Rico.
Clark, C. Vergara, Chilean Minister to Panama and Central America, San José, Costa Rica.
Clark, J. Reuben, Jr., Hibbs Building, Washington, D. C.
Clarke, R. Floyd, 37 Wall Street, New York City.
Clarke, Samuel B., 32 Nassau Street, New York City.
Clay, Buckner, Coyle and Richardson Building, Charleston, W. Va.

Clifton, John W., Woodward Building, Washington, D. C.
Clinch, Edward S., 41 Park Row, New York City.
Clinton, George, 1012 Prudential Building, Buffalo, New York.
Clymer, P. K., Ithaca, New York.
Cobb., D. R., 15 Third National Bank Building, Syracuse, New York.
Cochran, M. H., 30½ Mellen Street, Cambridge, Massachusetts.
Cockran, William Bourke, 31 Nassau Street, New York City.
Coffin, William, American Consul General, Budapest, Hungary.
Cohen, William N., 22 William Street, New York City.
Colby, James F., 2 Elm Street, Hanover, New Hampshire.
Cole, T. L., 715 Colorado Building, Washington, D. C.
Coll, Carlos Aristimuño, Caracas, Venezuela.
Collier, Theodore, Brown University, Providence, R. I.
Collier, William Miller, 37 William Street, Auburn, New York.
Conant, Ernest L., 34 Nassau Street, New York City.
Conner, B. H., 32 Avenue de l'Opera, Paris, France.
Connor, Henry G., U. S. District Judge, Wilson, North Carolina.
Conyers, C. B., Brunswick, Georgia.
Coolidge, Archibald C., Harvard University, Cambridge, Massachusetts.
Coolidge, John Gardner, 130 Beacon Street, Boston, Massachusetts.
Coombs, William J., 63 South Portland Avenue, Brooklyn, N. Y.
Corea, Luis F., 49 Wall Street, New York City.
Cormac, T. E. K., 25 California Street, San Francisco, California.
Corning, Charles R., Concord, New Hampshire.
Costa, A. Palacios, Uruguay 1252, Buenos Aires, Argentine Republic.
Costa, Luis A. Podesta, Chile 2156, Buenos Aires, Argentina.
Cotton, Joseph B., Alworth Building, Duluth, Minnesota.
Coudert, Frederic R., 124 East 56th Street, New York City.
Courtney, Paul G., 436 Marlborough Street, Boston, Massachusetts.
Coxe, Macgrane, 233 Broadway, New York City.
Crandall, Samuel B., Colorado Building, Washington, D. C.
Crane, Richard, Department of State, Washington, D. C.
Crawford, William W., 906 Realty Building, Louisville, Ky.
Creel, Enrique C., care of Ministry of Foreign Affairs, Mexico, D. F., Mexico.
Cresson, W. P., American Embassy, Petrograd, Russia.
Crocker, Henry G., 2 Jackson Place, Washington, D. C.
Cromwell, William Nelson, 12 West 49th Street, New York City.
Crosby, James O., Garnavillo, Iowa.
Cueva, Augustín, Quito, Ecuador.
Culkin, Wm. E., 403 Palladio Building, Duluth, Minnesota.
Cunningham, John H., Irrigation Service, Guayama, P. R.
Currier, Richard D., New Jersey Law School, Newark, New Jersey.
Curtis, Charles Boyd, 152 East 65th Street, New York City.
Curtis, James F., 62 Cedar Street, New York City.
Curtis, William Edmund, 30 Broad Street, New York City.

Daly, Beverly C., Laramie, Wyoming.
Darby, W. Evans, "Jesmond," 50 Norfolk Road, Seven Kings, Essex, England.
Darrow, Pierce W., care International Banking Corporation, Yokohama, Japan.
Dart, William K., 904-10 Canal Bank Building, New Orleans, La.
David, Eduardo Gutierrez, Bacolar, Pampanga, P. I
Davies, Julien T., 34 Nassau Street, New York City.
Davis, C. Claflin, 7 Rue Scribe, Paris, France.
Davis, G. W., The Connecticut, Washington, D. C.
Davis, John W., Department of Justice, Washington, D. C.
Davis, O. K., care of New York *Times,* Post Building, Washington, D. C.
Davis, Vernon M., New York Supreme Court, City Hall Park, New York City.
Davis, W. B., Perry, Florida.
Day, William R., 1301 Clifton Place, Washington, D. C.
Dean, Charles Ray, 806 Colorado Building, Washington, D. C.
Dean, Oliver H., 1031 Scarritt Building, Kansas City, Missouri.
De Angelis, P. C. J., Utica, New York.
Deeter, Paxson, 1333 Land Title Building, Philadelphia, Pennsylvania.
DeFriese, L. H., Broad St. House, Old Broad Street, London, England.
DeKnight, Clarence W., Hibbs Building, Washington, D. C.
De Laittre, Karl, 924 Plymouth Building, Minneapolis, Minn.
Denègre, George, Box 188, New Orleans, Louisiana.
Dennis, William Cullen, 810 Union Trust Building, Washington, D. C.
Dexter, Stanley W., 71 Broadway, New York City.
Diaz, Julian Fiallos, La Ceiba, Honduras.
Dickerson, L. L., Grinnell College, Grinnell, Iowa.
Dickinson, Edwin D., Thayer Lodge, Hanover, N. H.
Dickinson, J. M., 800 The Temple, Chicago, Illinois.
Dickson, Samuel, 750 Bullitt Building, Philadelphia, Pa.
Dillon, Luis A., Apartado 172, Guayaquil, Ecuador.
Ding, Neng Guong, Board of Foreign Affairs, Foochow, China.
Dodge, Geoffrey, 40 Wall Street, New York City.
Dodge, Robert G., 53 State Street, Boston, Massachusetts.
Donaldson, Chester, American Consul, Port Limon, Costa Rica.
Donaldson, J. L., Mount Morris, Illinois.
Doroghi, Ervin, Andrássy-út 5, Budapest, Hungary.
Dow, Alex., 18 Washington Avenue, Detroit, Michigan.
Dowell, E. S., 321 Sherman Avenue, Macomb, Illinois.
Doyle, W. T. S., 1347 Park Road, Washington, D. C.
Drago, Luis M., 761 Avenida de Mayo, Buenos Aires, Argentina.
Drew, Geo. W., 918 F Street, N. W., Washington, D. C.
Dueñas, Francisco, Minister of Salvador, Washington, D. C.
Dulles, John Foster, 49 Wall Street, New York City.
Duncan, Douglass, Chambers-Advocate's Hall, Aberdeen, Scotland.
Duncan, D. Shaw, University Park, Colorado.
Duniway, C. A., 715 Thornburgh Street, Laramie, Wyoming.
Duret, M. Lanz, San Augustin 316, Mexico, D. F., Mexico.

Eager, George B., Jr., University of Virginia, Charlottesville, Va.
Earl, Charles, 165 Broadway, New York City.
Eastman, Albert N., 154 La Salle Street, Chicago, Illinois.
Eastman, Victor, Legation of Chile, Quito, Ecuador.
Echeverria, F., Calle 8ª Norte, No. 146, Apartado No. 428, San José, Costa Rica.
Echols, John Warnock, Vienna, Va.
Edmonds, Franklin S., Franklin Building, Philadelphia, Pennsylvania.
Edmunds, Sterling E., 510 Carleton Building, St. Louis, Missouri.
Edwards, Stephen O., 181 Lloyd Avenue, Providence, Rhode Island.
Edwards, T., Underwood, Lustleigh, Devon, England.
Eisner, Mark, Assembly Chamber, Albany, New York.
Elder, Samuel J., Pemberton Building, Boston, Massachusetts.
Eliot, Charles W., 17 Quincy Street, Cambridge, Massachusetts.
Eliot, Edward C., Third National Bank Building, St. Louis, Missouri.
Elizalde, R. H., Quito, Ecuador.
Elliott, Charles B., Palace Building, Minneapolis, Minnesota.
Elliott, Edward, University of California, Berkeley, California.
Elliott, Samuel E., Monongahela House, Pittsburgh, Pennsylvania.
Ellis, Wade H., Southern Building, Washington, D. C.
Emery, James A., Union Trust Building, Washington, D. C.
Emrich, William H. Pauling, 26 Avenue de l'Opera, Paris, France.
Engert, A. van Hemert, American Embassy, Constantinople, Turkey.
Erich, Rafael, Kirkkokatu 1, Helsingfors, Finland.
Ervin, Spencer, 1601 Morris Building, Philadelphia, Pennsylvania.
Escalona, Pedro F., Ciudad Bolivar, Venezuela.
Evans, Earle W., 423 Beacon Building, Wichita, Kansas.
Evans, Lawrence B., 701 Barrister's Hall, Boston, Massachusetts.
Evans, Lynden, Portland Block, 35 North Dearborn Street, Chicago, Illinois.
Evans, Richard T., Pei-Yang University, Tientsin, China.
Evarts, A. W., 60 Wall Street, New York City.
Ewart, John S. Ottawa, Canada.
Ewing, Neal H., 34 Nassau Street, New York City.
Eyzaguirre, Javier, Moneda 687, Santiago, Chile.

Falconbridge, John D., 85 Bay Street, Toronto, Canada.
Faries, David R., Hall of Records, Los Angeles, California.
Faulkner, Charles J., 1416 F Street, N. W., Washington, D. C.
Fenwick, Chas. G., Bryn Mawr College, Bryn Mawr, Pennsylvania.
Ferguson, John C., 91 Arlington Street, Newton, Massachusetts.
Figueroa Alcorta, J., Parana 1231, Buenos Aires, Argentina.
Finch, George A., 1313 Emerson St., N. W., Washington, D. C.
Finkelstein, Harold, 105 West 114th Street, New York City.
Fish, Frederick P., 84 State Street, Boston, Massachusetts.
Fisher, Edgar A., Earlham College, Richmond, Indiana.
Fitzpatrick, Charles, Chief Justice of Canada, Ottawa, Canada.
Flannery, J. S., Hibbs Building, Washington, D. C.

Fleming, Matthew C., 71 Broadway, New York City.
Fletcher, Bertram L., 2 Rector Street, New York City.
Fletcher, Henry P., American Minister, Santiago, Chile.
Fletcher, W. B., Naval War College, Newport, Rhode Island.
Flores Colón, Eduardo, Ponce, P. R.
Flournoy, Richard W., Jr., Department of State, Washington, D. C.
Fontana, Richard de, Consul of Greece, 408 Williams Building, San Francisco, California.
Foord, John, 32 Broadway, New York City.
Ford, Tod, Jr., 2123 California Street, Washington, D. C.
Fornés, Ledo. G. Casta, Box 43, Anasco, P. R.
Foster, Frederick, 1029 Beacon Street, Brookline, Massachusetts.
Foster, John W., 1323 18th Street, Washington, D. C.
Fowle, Charles W., 403 E. Broad Street, Bethlehem, Pennsylvania.
Fowler, John, American Consul, Riviere du Loup, Quebec, Canada.
Frankfurter, Felix, Harvard Law School, Cambridge, Mass.
Frantz, D. S., König University, Kiel, Germany.
Fraser, George C., 20 Exchange Place, New York City.
Fraser, James H., Sterling Bank Chambers, Toronto, Canada.
French, Francis Henry, Davenport, Iowa.
Frers, Emilio, Callao 1540, Buenos Aires, Argentina.
Fromageot, Henri, 6 Avenue de l'Eglise, Versailles (Chesnay), France.
Frost, E. Allen, 29 South La Salle Street, Chicago, Illinois.
Fuentes, Eugenio Sanchez de, 18 Tejadillo, Habana, Cuba.
Fuentes, Fernand Sánchez de, Aguiar 38, Habana, Cuba.
Furlong, W. R., U. S. S. Wyoming, c/o Postmaster, New York City.
Furniss, Henry W., 132 West New York Street, Indianapolis, Indiana.

Gallo, A. Viera, Iquique, Chile.
Gallup, Dana T., Old Mystic, Conn.
Garcia, Coronado, Calle Acal, Comayaguela, Honduras.
Garcia, Rufino V., Calle de Guadalupe 227, Lima, Peru.
Garcia-Velez, Carlos, Cuban Minister, London, England.
Gardner, A. P., Sagamore Farm, Hamilton, Massachusetts.
Garennes, Jean F. P. des, 115 Broadway, New York.
Garfield, Harry A., Williams College, Williamstown, Massachusetts.
Garner, James W., Urbana, Illinois.
Garrett, John W., Garrett Building, Baltimore, Maryland.
Garst, Julius, Worcester, Massachusetts.
Gary, Frank E. H., 10 Tremont Street, Boston, Mass.
Gary, Hampson, Department of State, Washington, D. C.
Gasser, Roy C., 35 Wall Street, New York City.
Gaulin, Alphonse, American Consul, Marseilles, France.
Gay, Thomas B., Virginia Railway and Power Building, Richmond, Va.
Geddes, Frederick L., 1103 Ohio Building, Toledo, Ohio.
Gerry, Peter Goelet, 258 Broadway, New York City.

Gherini, Ambrose, 460 Montgomery Street, San Francisco, California.
Gibbons, George C., London, Canada.
Gibbons, John H., U. S. Naval Academy, Annapolis, Maryland.
Giberga, Eliseo, Prado 10, Habana, Cuba.
Gibson, Hugh S., American Legation, Brussels, Belgium.
Gifford, James M., 5 Nassau Street, New York City.
Gill, W. H., First National Bank Building, Houston, Texas.
Gillis, I. V., U. S. Navy, Retired, Peking, China.
Giménez Herrera, G., Sabaneta, Dominican Republic.
Goddard, Wm. D., Librarian, Naval War College, Newport, Rhode Island.
Godoy, Jose F., 1715 Q Street., N. W., Washington, D. C.
Goldthwaite, du Val R., 33 Trowbridge Street, Cambridge, Mass.
Gonzalez, Joaquin V., Calle Arenales 1441, Buenos Aires, Argentina.
Gonzalez, Luis V., Camara de Representantes, Bogotá, Colombia.
Goulder, Harvey D., Cleveland, Ohio.
Grahame, Leopold, Lawyers' Club, 120 Broadway, New York City.
Gram, Jesse P., 34 Nassau Street, New York City.
Grant, Claudius B., 410 Pasadena Apts., Detroit, Michigan.
Grant, Ludovic J., 4 Belgrade Crescent, Edinburgh, Scotland.
Grant, Walter B., 18 Tremont Street, Boston, Massachusetts.
Gray, George, Wilmington, Delaware.
Gray, William J., 924 Ford Building, Detroit, Michigan.
Greene, E. Gerry, American Embassy, London, England.
Greene, Roger S., American Consul-General, Hankow, China.
Gregory, Charles Noble, 1502 H Street, N. W., Washington, D. C.
Gregory, Henry E., 27 Cedar Street, New York City.
Grew, Joseph Clark, American Embassy, Berlin, Germany.
Griggs, John W., 27 Pine Street, New York City.
Grisanti, Carlos F., Caracas, Venezuela.
Griscom, Lloyd C., 52 William Street, New York City.
Grossman, Moses H., 115 Broadway, New York City.
Guardia, Aurelio, Supreme Court of Justice, Panama, Panama.
Guardia, Ricardo Fernandez, San José, Costa Rica.
Guerrero M., Salvador, Léon, Nicaragua.
Guggenheim, Harry F., Great Neck, Long Island.
Guil, Antonio Trujillo, San Juan, Porto Rico.
Guild, S. E., Jr., 102 Beacon Street, Boston, Massachusetts.
Guillen, Mariano, Trujillo, Honduras.
Guillermety, Rafael, San Juan, Porto Rico.
Gulentz, Charles, 134 Bellefield Avenue, Pittsburgh, Pennsylvania.
Gunther, Franklin Mott, American Embassy, London, England.
Gurley, W. W., Marquette Building, Chicago, Illinois.
Guthrie, Geo. W., American Embassy, Tokyo, Japan.
Guthrie, William D., 44 Wall Street, New York City.
Gutierrez, Alberto, La Paz, Bolivia.
Guzman, M. A., Anasco, Porto Rico.

Haff, Delbert James, Kansas City, Missouri.
Hains, Peter C., 818 18th Street, N. W., Washington, D. C.
Hale, Chandler, Metropolitan Club, Washington, D. C.
Hall, Frederick S., Taunton, Massachusetts.
Hall, H. C., Interstate Commerce Commission, Washington, D. C.
Halsey, John J., Lake Forest College, Lake Forest, Illinois.
Hamill, Charles H., 105 West Monroe Street, Chicago, Ill.
Hamlin, Charles S., 14 Beacon Street, Boston, Massachusetts.
Hanihara, Masanao, Foreign Office, Tokyo, Japan.
Hanks, Stedman S., Manchester, Massachusetts.
Harper, Donald, 32 Avenue de l'Opera, Paris, France.
Harriman, E. A., 129 Church St., New Haven, Connecticut.
Harris, N. Dwight, Northwestern University, Evanston, Illinois.
Harrison, Ralph C., 1405 Van Ness Avenue, San Francisco, California.
Hart, Albert Bushnell, 19 Craigie Street, Cambridge, Massachusetts.
Hart, W. O., 134 Carondelet Street, New Orleans, Louisiana.
Harvey, John L., Mercantile Building, Waltham, Massachusetts.
Harvey, Roland B., American Embassy, Berlin, Germany.
Haselton, Seneca, Burlington, Vermont.
Hastings, C. H., Library of Congress, Washington, D. C.
Hatfield, Chas. E., 108 Cherry St., West Newton, Massachusetts.
Hawes, Harry B., Third National Bank Building, St. Louis, Missouri.
Hay, Woodhull, 164 East 61st Street, New York City.
Haya, Raúl E., Lima, Peru.
Hayden, James H., Bond Building, Washington, D. C.
Hayes, Alfred, Jr., Cornell University Law School, Ithaca, New York.
Hays, W. F., Boerne, Texas.
Hazeltine, Harold D., Emmanuel College, Cambridge, England.
Hazen, Charles Downer, The Connecticut, Washington, D. C.
Heigho, E. M., New Meadows, Idaho.
Heim, Moritz, 47 East Sixth Street, St. Paul, Minnesota.
Henderson, John B., 16th Street and Florida Avenue, Washington, D. C.
Henriquez y Carvajal, Fco., Legation of the Dominican Republic, Port au Prince, Haiti.
Henry, Philip S., Zealandia, Asheville, North Carolina.
Herrick, Charles J., Union University, 452 Broadway, Albany, New York.
Hershey, Amos S., 706 N. College Avenue, Bloomington, Indiana.
Hicks, Frederick Charles, Library, Columbia University, New York City.
Higgins, Alexander Pearce, 5 Salisbury Villa, Station Road, Cambridge, England.
Hill, David J., 1745 Rhode Island Avenue, N. W., Washington, D. C.
Hinckley, Frank E., U. S. Court for China, Shanghai, China.
Hioki, Dr. Eki, Japanese Legation, Peking, China.
Hitt, R. S. Reynolds, 1501 New Hampshire Avenue, Washington, D. C.
Hitz, William, Hibbs Building, Washington, D. C.
Hodges, H. G., 515 Clapier Street, Germantown, Pennsylvania.

Hole, Allen D., Earlham College, Richmond, Indiana.
Hollis, W. Stanley, American Consul, Beirut, Syria.
Holt, Hamilton, 130 Fulton Street, New York City.
Hood, John, Capt., U. S. S. Texas, care Postmaster, New York City.
Hopkins, Sherburne Gillette, Hibbs Building, Washington, D. C.
Hornbeck, Stanley K., University of Wisconsin, Madison, Wisconsin.
Hostetter, Louis, American Consul, Hermosillo, Mexico.
Hotchkiss, Charles E., 34 Nassau Street, New York City.
Hotchkiss, William H., 55 Liberty Street, New York City.
Hourwich, Isaac A., 80 Maiden Lane, New York City.
Howard, Esme, British Legation, Berne, Switzerland.
Howard, T. B., Navy Department, Washington, D. C.
Hubbard, G. Evans, Thayer Hall, Cambridge, Massachusetts.
Huber, Max, Wyden B/Ossingen, Ktn. Zurich, Switzerland.
Hudicourt, Pierre, The Cairo, Washington, D. C.
Hull, William I., Swarthmore College, Swarthmore, Pennsylvania.
Humphrey, Alex. P., Realty, Louisville, Kentucky.
Huneeus, Antonio, Catedral 1143, Santiago, Chile.
Hunsaker, William J., Los Angeles, California.
Hunt, Harry E., 141 Arden Road, Detroit, Michigan.
Hunt, J. L. Starr, 12 Calle de San Francisco, Mexico City, Mexico.
Hurst, Cecil, Foreign Office, London, England.
Hutchinson, Charles, 300 Crocker Building, Des Moines, Iowa.
Hyde, Charles Cheney, 135 Adams Street, Chicago, Illinois.

Ibor, Rafael M., Consul of Cuba, Tampa, Florida.
Idman, K. G., Lotsgatan 1, Helsingfors, Finland.
Ion, Theodore P., 34 Nassau Street, New York City.
Irala, Antolin, Ayolas Esq. Oliva, Asuncion, Paraguay.
Iramain, Julio Gonzalez, Dr., Santa Fe 2224, Buenos Aires, Argentina.
Iriguyen, David García, Camaná 995, Lima, Peru.
Isham, Edward S., 26 West 37th St., New York City.
Issenhuth, William, Redfield, South Dakota.
Itakura, Takugo, Jiji, Shimpo, Tokyo, Japan.
Ives, Eugene Semmes, Tucson, Arizona.
Ivins, William M., 27 William Street, New York City.
Izquierdo, Luis, 1543 Compania, Santiago, Chile.

James, Francis B., Cincinnati, Ohio.
Jana, Federico C., Recomendado á los Wesche & Ca., Caixa Postal 340, Manaos, Brazil.
Janes, Henry L., American Legation, Montevideo, Uruguay.
Jaramillo, Manuel J., Loja, Ecuador.
Jayne, Chester A., 2 Wall Street, New York City.
Jayne, Henry LaBarre, 1035 Spruce Street, Philadelphia, Pa.
Jeffrey, J. A., care Jeffrey Mfg. Co., Columbus, Ohio.

Jenks, Jeremiah W., New York University, Washington Square, New York City.
Jenner, William A., 34 Pine Street, New York City.
Jennings, Oliver G., 49 Wall Street, New York City.
Jensen, Christen, 82 East 7th North Street, Provo, Utah.
Jewell, John F., American Consulate, Chefoo, China.
Johnson, Arthur S., 316 Huntington Avenue, Boston, Massachusetts.
Johnson, E. Bert, 340 Main Street, Worcester, Massachusetts.
Johnson, Edwin J., 49 Wall Street, New York City.
Johnson, Nelson Trusler, American Consul, Changsha, China.
Johnson, Stewart, care Department of State, Washington, D. C.
Johnston, Allen W., 500 State Street, Schenectady, New York.
Jones, Chester Lloyd, 151 Summit Avenue, Madison, Wisconsin.
Jones, George Heber, 150 Fifth Avenue, New York City.
Joubert, Emilio C., The Shoreham, Washington, D. C.
Judson, Frederick N., St. Louis, Missouri.
Judson, Harry Pratt, University of Chicago, Chicago, Illinois.

Kalow, Teodoro M., Secretary of the Philippine Assembly, Manila, P. I.
Karavongse, Phya Prabha, Siamese Minister, Washington, D. C.
Kasai, Jiuji G., 504–5 Chronicle Building, San Francisco, California.
Katz, Edwin, Behrenstrasse 17, Berlin W. 8, Germany.
Kaufmann, Wilhelm, Uhlandstrasse 63, Wilmersdorf-Berlin, Germany.
Keblinger, Wilbur, American Consul, Malta, Maltese Islands.
Keene, Francis B., American Consul, Genoa, Italy.
Kegley, W. B., Wytheville, Va.
Kellen, William V., care of Library, Brown University, Providence, R. I.
Kelley, J. D. J., 25 East 83d Street, New York City.
Kellogg, Frank B., Merchants' National Bank Building, St. Paul, Minnesota.
Kellogg, L. Laflin, 120 Broadway, New York City.
Kennedy, Crammond, Bond Building, Washington, D. C.
Kenneson, Thaddeus D., 15-19 East 11th Street, New York City.
Kernochan, J. Frederic, 44 Pine Street, New York City.
Keys, Luther Marten, Hobart, Oklahoma.
Kidder, Camillus G., 76 Highland Avenue, Orange, New Jersey.
Kiersch, H. J. P. A., Rotterdam, Holland.
King, George A., 728 17th Street, Washington, D. C.
Kingsbury, Howard Thayer, 2 Rector Street, New York City.
Kip, Garrett B., 131 East 66th Street, New York City.
Kirby, Daniel N., 4142 Morgan Street, St. Louis, Missouri.
Kirchner, Otto, 1717 Jefferson Avenue, Detroit, Michigan.
Kirchwey, George W., 800 Riverside Drive, New York City.
Klar, A. Julian, 130 Montague Street, Brooklyn, New York.
Knapp, Harry Shepard, The Marlborough, 917 18th Street, N. W., Washington, D. C.
Knapp, Martin A., Southern Building, Washington, D. C.
Knight, Austin M., President, Naval War College, Newport, Rhode Island.

Knox, P. C., Valley Forge, Pennsylvania.
Kohler, Max J., 30 Broad Street, New York City.
Komatsu, Takashi, c/o Toyo Kisen Kaisha, 75 Yamashita Cho, Yokohama, Japan.
Kottman, William A., 205 Edgecombe Avenue, New York City.
Kraus, Herbert, Frederich Wilhelmstr., 82 Dresden, Germany.
Krehbiel, Edward B., Leland Stanford University, Stanford University, Cal.
Kuhn, Arthur K., Equitable Building, New York City.

Lacock, John K., Amity, Pennsylvania.
Lafinur, Luis Melian, Montevideo, Uruguay.
La Fontaine, Henri, c/o Belgian Consul, New York City.
Lainez, Silverio, Tegucigalpa, Honduras.
Lamar, Lucius Q. C., 58 Cuba Street, Habana, Cuba.
Lane, Rufus H., Headquarters U. S. Marine Corps, Washington, D. C.
Lange, Charles L., Oldenborg, Smestad, V. Aker, Norway.
Langhorne, M. Marshall, American Legation, The Hague, The Netherlands.
Lanier, A. S., American National Bank Building, Richmond, Virginia.
Lansing, Robert, Department of State, Washington, D. C.
Lapradelle, A. de, 2 Rue le Courbe, Paris, France.
Larocque, Joseph, Jr., 40 Wall Street, New York City.
Lascurain, Pedro, 39 Orizaba Street, Mexico City, Mexico.
Latané, John H., Johns Hopkins University, Baltimore, Maryland.
Lathrop, Gardiner, A. T. & S. F. R. R. Co., Railway Exchange, Chicago, Illinois.
Lauterbach, Edward, 22 William Street, New York City.
Lawler, Oscar, Los Angeles, Cal.
Lawson, John D., University of Missouri, Columbia, Mo.
Lawton, E. M., Apartado 124, Oaxaca, Mexico.
Leavitt, John Brooks, 30 Broad Street, New York City.
Leckie, A. E. L., Southern Building, Washington, D. C.
Lee, Blewett, 135 Park Row, Chicago, Illinois.
Lee, Ivy L., Penna. R. R. Co., Broad Street Station, Philadelphia, Pa.
L'Engle, E. J., 209-212 Law Exchange, Jacksonville, Florida.
Lefevre, Ernesto T., Casilla 175, Panama, Panama.
Leiser, Andrew Albright, 522 St. George St., Lewisburgh, Union Co., Pa.
Leite, Leopoldo Teisaria, Rua do Ouvidu, 68 Sala, Núm. 9, Rio de Janeiro, Brazil.
Leon, Carlos, Caracas, Venezuela.
Lesourd, André, 20 Boulevard Malesherbes, Paris, France.
Leupp, Harold L., University of California Library, Berkeley, California.
Leval, G. de, 85 Avenue de la Toison d'Or, Brussels, Belgium.
Leventritt, David, 34 West 77th Street, New York City.
Leventritt, Edgar M., 27 William Street, New York City.
Leverett, Geo. V., 53 Devonshire Street, Boston, Mass.
Lewis, Robert E., General Secretary, Y. M. C. A., Cleveland, Ohio.
Lichtenstein, Walter, Librarian, Northwestern University Library, Evanston, Ill.
Liessman, Charles, Tuttle, North Dakota.

Lima, M. de Olivera, 15 Wetherby Gardens, South Kensington, S. W., London, England.
Lindsay, Edward, Warren National Bank Building, Warren, Pennsylvania.
Lindsay, John D., 31 Nassau Street, New York City.
Liscano, Juan, Altagracia-Cuartel Viejo 24, Caracas, Venezuela.
Litchfield, E. H., Jr., 2 Montague Terrace, Brooklyn, New York.
Livingston, Lemuel W., Cape Haitien, Haiti.
Llanos, Mario Ruiz de los, Minister of the Argentine Republic, Asuncion, Paraguay.
Llovena, Juan Landaeta, Caracas, Venezuela.
Lodge, Henry Cabot, United States Senate, Washington, D. C.
Loeb, Charles G., 6 Rue de la Michaudiére, Paris, France.
Loewy, Benno, 206 and 208 Broadway, New York City.
Logan, John Hubbard, Box 24, New Brunswick, New Jersey.
Lombardi, Juan, President of the Supreme Court of Justice, Panama, Panama.
Long, Boaz W., Department of State, Washington, D. C.
Long, Breckenridge, 220 North 4th Street, St. Louis, Missouri.
Lopez, Eduardo Martinez, Tegucigalpa, Honduras.
Lopez, Coronel Nicolas F., Apartado 50, Quito, Ecuador.
Lopez H., R., Roatán, Honduras.
Lowe, W. G. S., Western Military Academy, Upper Alton, Illinois.
Lowrie, S. Gale, University of Cincinnati, Cincinnati, Ohio.
Lüthi, Frederic C. Legation of Switzerland, 2013 Hillyer Place, Washington, D. C.
Lyons, John D., Monticello, New York.

Ma, K. S., 10 Oxford Street, Cambridge, Massachusetts.
MacArthur, John R., 11 Pine Street, New York City.
MacChesney, Nathan William, 568 Hawthorne Place, Chicago, Ill.
MacEldowney, W. A., 225 South Sixth Street, Philadelphia, Pennsylvania.
Macfarland, Henry B. F., 901 Evans Building, Washington, D. C.
Mack, Julian W., 605 Post Office Building, Chicago, Illinois.
MacKay, John, 85 Bay Street, Toronto, Canada.
MacMurray, John Van Antwerp, American Legation, Peking, China.
Maddox, Samuel, 340 Indiana Avenue, Washington, D. C.
Madeira, Percy C., Jr., 934 Land Title Building, Philadelphia, Pa.
Magoon, Charles E., The Marlborough, Washington, D. C.
Mahoney, Timothy J., City National Bank Building, Omaha, Nebraska.
Maitri, Phya Sudham, Siamese Legation, London, England.
Mallet-Prevost, S., 30 Broad Street, New York City.
Mallett, Frank E., c/o Department of State, Washington, D. C.
Manning, W. R., University of Texas, Austin, Texas.
Marburg, Theodore, 14 W. Mt. Vernon Place, Baltimore, Md.
Marean, Endicott, 151 Brattle Street, Cambridge, Mass.
Martin, Ernesto, San José, Costa Rica.
Martin, W. A. P., A. P. Mission, Peking, China.
Martinez C., Diego, Cartagena, Colombia.

Martinez, Marcial, Moneda 856, Santiago, Chile.
Marvel, Josiah, Du Pont Building, Wilmington, Delaware.
Marvin, Langdon Parker, 37 Wall Street, New York City.
Mason, Alfred F., West Publishing Co., St. Paul, Minnesota.
Masten, Frank S., 1020 Rockefeller Building, Cleveland, Ohio.
Mather, Samuel, Western Reserve Building, Cleveland, Ohio.
Mathews, J. M., University of Illinois, Urbana, Illinois.
Matos, José, 5a Calle Poniente, No. 1, Guatemala, Guatemala.
Matsuda, Michikazu, Foreign Office, Tokyo, Japan.
Maxwell, Lawrence, 104 West 4th Street, Cincinnati, Ohio.
Maxwell, W. J., care of Postmaster, San Francisco, California.
Mayer, Henry James, 49 Wall Street, New York City.
Mayland, A. U., Albert Lea, Minnesota.
Maza y Artola, Juan José, San Rafael 75, Habana, Cuba.
Mazon, Luis, Cuban Legation, Guatemala City, Guatemala.
McClellan, William, 141 Broadway, New York.
McCreery, Fenton, R., 526 Beach Street, Flint, Michigan.
McCurdy, Delos, 66 Broadway, New York City.
McEnerney, Garret W., 2002 Hobart Building, San Francisco, California.
McEwan, Francis G., P. O. Box 616, Port Arthur, Texas.
McGonigal, T. G., 116 Masonic Temple, Mobile, Alabama.
McGoodwin, Preston, American Legation, Caracas, Venezuela.
McIlvaine, Tompkins, 52 William Street, New York City.
McKenney, Frederic D., Hibbs Building, Washington, D. C.
McKinney, Glen Ford, 52 William Street, New York City.
McLaren, William A., 115 Broadway, New York City.
McLean, Donald, 27 William Street, New York City.
McLean, Ridley, Navy Department, Washington, D. C.
McMahon, Fulton, 165 Broadway, New York City.
McMahon, John A., Schwind Building, Dayton, Ohio.
McNamara, Stuart, 52 William Street, New York City.
McNeir, William, Department of State, Washington, D. C.
McWilliams, C. M., 907 Scanlon Building, Houston, Texas.
Mead, Edwin D., 40 Mt. Vernon Street, Boston, Massachusetts.
Medina, Eduardo Diez de, Oruro, Bolivia.
Membreño, Alberto, Minister of Honduras, Washington, D. C.
Mendoza, Dr. Alberto, Supreme Court of Justice, Panama, Panama.
Mendoza, Carlos A., Panama, Panama.
Mendoza, Claudio, Amargura 23, Apartado 164, Habana, Cuba.
Mercer, H. V., 510 Security Bank Building, Minneapolis, Minnesota.
Merkel, O. J., 225 Fifth Avenue, New York City.
Merrell, J. P., Mansion House, Hicks Street, Brooklyn, New York.
Merrill, J. H., Thomasville, Georgia.
Michener, L. T., 622 F Street, Washington, D. C.
Milburn, John G., 54 Wall Street, New York City.
Miller, C R., New York *Times,* Times Square, New York City.
Miller, John H., Crocker Building, San Francisco, California.

Miller, John S., Jr., 15 Bellevue Avenue, Cambridge, Massachusetts.
Miller, R. S., American Consul-General, Seoul, Korea.
Miller, Sidney T., 524 Jefferson Avenue, Detroit Michigan.
Mills, Anson, 2 Dupont Circle, Washington, D. C.
Milmore, Oscar L., 1713 Corcoran Street, Washington, D. C.
Minor, Raleigh C., University of Virginia, Charlottesville, Virginia.
Mitchell, James McC., 558 Ellicott Square, Buffalo, New York.
Mitchell, William D., 624 Endicott Building, St. Paul, Minnesota.
Mitre, Jorge A., Avenida Alevar 1790, Buenos Aires, Argentina.
Miura, Yagoro, The Highlands, Washington, D. C.
Mohun, Barry, Glover Building, Washington, D. C.
Monagas, César Terrero, Avenida da Norte 6 No. 68, Caracas, Venezuela.
Montague, A. J., Mutual Building, Richmond, Virginia.
Montoro, Rafael, Calle de Neptuno Núm. 192, Habana, Cuba.
Montufar, Rafael, Paramus Road, Ridgefield, New Jersey.
Mooney, Edmund L., 37 Wall Street, New York City.
Moore, John Bassett, 267 W. 73rd Street, New York City.
Moore, R. Walton, Metropolitan Bank Building, Washington, D. C.
Moore, William A., 29 Liberty Street, New York City.
Moorhead, M. K., American Consulate, Box 208, Rangoon, Burma, India.
Moot, Adelbert, Buffalo, New York.
Morales, E. A., The Portland, Washington, D. C.
Morales, Luis Munoz, P. O. Box 1112, San Juan, Porto Rico.
Morazán, Daniel, Bluefields, Nicaragua.
Moreno, Luis Mejía, La Paz, Honduras.
Morey, William C., University of Rochester, Rochester, New York.
Morgan, C. E., 3rd., 934 Land Title Building, Philadelphia, Pa.
Morgan, Edwin V., American Ambassador, Rio de Janeiro, Brazil.
Morgan, Henry H., American Consul-General, Hamburg, Germany.
Morison, Samuel E., 156 Mt. Vernon Street, Boston, Massachusetts.
Morris, Henry C., 924 Marquette Building, Chicago, Illinois.
Morris, Robert C., 27 Pine Street, New York City.
Morrison, A. F., Crocker Building, San Francisco, California.
Morrow, William W., Court House Building, San Francisco, California.
Mott, John R., 124 East 28th Street, New York City.
Mount, Russell T., 27 William Street, New York City.
Mountain, Henry, 15 Broad Street, New York City.
Mower, Edmund C., Burlington, Vermont.
Moxom, Philip S., Springfield, Massachusetts.
Munro, Henry F., 12 Oxford Street, Cambridge, Mass.
Murphy, James R., 27 School Street, Boston, Massachusetts.
Murrin, James B., Carbondale, Pa.
Myers, Denys P., 40 Mt. Vernon Street, Boston, Massachusetts.
Myers, T. Percy, Union Trust Building, Washington, D. C.

Nagel, Charles, Security Building, St. Louis, Missouri.
Naón, Romulo S., Argentine Ambassador, 1600 New Hampshire Avenue, Washington, D. C.

Nasmyth, George W., 40 Mt. Vernon Street, Boston, Massachusetts.
Navas, Daniel Gutierrez, President of the Central American Court of Justice, San José, Costa Rica.
Needham, Charles Willis, 1809 Phelps Place, Washington, D. C.
Neilson, John, 311 Madison Avenue, New York City.
Neumeyer, Karl, Königinstr., 35a, Munich, Germany.
Newcomb, H. T., Metropolitan Bank Building, Washington, D. C.
Nicholson, Soterios, The Wyoming, Washington, D. C.
Nielson, Fred K., Assistant Solicitor of the Department of State, Washington, D. C.
Nippold, Otfried, Oberursel near Frankfort-on-Main, Germany.
Nix, H. Abit, Athens, Georgia.
Nixon, Lewis, 22 East 53d Street, New York City.
Noble, Herbert, 52 William Street, New York City.
North, S. N. D., 2 Jackson Place, Washington, D. C.
Norton, J. K. M., Alexandria, Virginia.
Nottingham, Edwin, 410 Walnut Place, Syracuse, New York.
Noyes, Charles Wood, 1001 Tremont Building, Boston, Massachusetts.
Numano, Y., 2548 Jackson Street, San Francisco, California.
Nutter, George R., 8 West Cedar Street, Boston, Massachusetts.

Oakes, Charles, 49 Wall Street, New York City.
O'Brien, Thomas J., Michigan Trust Building, Grand Rapids, Michigan.
Och, Joseph, 821 East Main Street, Columbus, Ohio.
Oeland, I. R., 115 Broadway, New York City.
Ogden, David B., 52 William Street, New York City.
O'Laughlin, John Callan, 1813 Adams Mill Road, Washington, D. C.
Olcott, R. Morgan, 27 William Street, New York City.
Olds, Clark, Erie, Pennsylvania.
Olin, Stephen H., 34 Nassau Street, New York City.
Oliver, James H., Office of Naval Intelligence, Navy Dept., Washington, D. C.
Olney, Richard, 710 Sears Building, Boston, Massachusetts.
O'Naghten, Juan, Campanario 128, Habana, Cuba.
Ong, Eugene W., 735 Exchange Building, Boston, Massachusetts.
Opdyke, Alfred, 20 Nassau Street, New York City.
Oppenheim, L., Whewell House, Cambridge, England.
Ornelas, Dr. Plutarco, Mexico, J. D., Mexico.
Orr, Arthur, 2126 Lincoln Park West, Chicago, Illinois.
Osuna, N. Pompilio, Calle Norte 8, Núm. 15, Caracas, Venezuela.
Otamendi, August, P. O. Box 248, Maracaibo, Venezuela.
Ottinger, Nathan, 60 Wall Street, New York City.
Owen, Carl M., Bronxville, New York.
Owens, Oscar Lee, 3100 Walbrook Avenue, Baltimore, Maryland.

Palmer, Ely E., Department of State, Washington, D. C.
Parker, Alton B., Seligman Building, William Street, New York City.
Parker, Sumner A., 913 St. Paul Street, Baltimore, Maryland.

Parkinson, E. J., American Club, Mexico, Mexico.
Parmelee, James, 720 The Cuyahoga, Cleveland, Ohio.
Partridge, Frank C. Proctor, Vermont.
Pastor, Don Luis, Spanish Legation, Peking, China.
Patterson, Benjamin, 302 Broadway, New York City.
Payne, C. H., American Consul, St. Thomas, D. W. I.
Payne, Jason E., Vermillion, South Dakota.
Paz, Ezequiel P., "La Prensa," Buenos Aires, Argentina.
Peartree, Henry, 39 Blvd. Haussmann, Paris, France.
Peelle, Stanton J., Irving and Connecticut Ave., Chevy Chase, Maryland.
Pena, Carlos Maria de, Uruguayan Minister, 1734 N Street, Washington, D. C.
Penalver, Carlos Garcia, Calle 7, Núm. 90, Vedado, Habana, Cuba.
Penfield, Walter S., 806 Colorado Building, Washington, D. C.
Pennoyer, Paul G., 9 Linden Street, Cambridge, Mass.
Pepper, George W., 1438 Land Title Building, Philadelphia, Pa.
Peregrino da Silva, Manoel Cicero, Rua Palmeiras, 54, Rio de Janeiro, Brazil.
Perez, hijo, Juan Pablo, Sur 5, Núm. 99, Caracas, Venezuela.
Perez, Luis Marino, Librarian, Cámara de Representantes, Habana, Cuba.
Perez-Verdía, Antonio F., Portal Allende 85, Ave. Colon, P. O. Box 224, Guadalajara, Jalisco, Mexico.
Perez-Verdia, Benito Javier, Pan American Union, Washington, D. C.
Perkins, Dexter, University of Rochester, Rochester, New York.
Perkins, Thomas N., 60 State Street, Boston, Massachusetts.
Perry, Antonio, P. O. Box 165, Honolulu, Hawaii.
Peynado, Francisco J., Minister of the Dominican Republic, 1824 Biltmore St., Washington, D. C.
Pezet, F. A., Peruvian Minister, 2223 R Street, N. W., Washington, D. C.
Philip, Joseph, Dalmore, Dundee, Scotland.
Phillips, H. C., Mohonk Lake, New York.
Phillips, William, Department of State, Washington, D. C.
Pierrepont, Seth Low, Ridgefield, Connecticut.
Pimental, José T., Enrique Guiral 49, Guanabacoa, Cuba.
Pinilla, Claudio, Ministry of Foreign Affairs, La Paz, Bolivia.
Pitkin, Jr., Wolcott H., Bangkok, Siam.
Plaza, V. de la, Libertad 1235, Buenos Aires, Argentina.
Poirier, Eduardo, Casilla 1773, Santiago, Chile.
Polk, Frank L., Department of State, Washington, D. C.
Porras, Belisario, Panama, Panama, Central America.
Portela, Epifanio, Argentine Legation, Rome, Italy.
Porter, George T., 1325 New Hampshire Ave., Washington, D. C.
Porter, Horace, 277 Madison Avenue, New York City.
Potter, Charles F., 716 Investment Building, Los Angeles, California.
Pound, Roscoe, Harvard Law School, Cambridge, Massachusetts.
Powell, H. A., St. John, N. B.
Power, John J., P. O. Box 532, Halifax, Nova Scotia.
Prado, Francisco Paniagua, Leon de Nicaragua, Central America.
Priest, Henry S., National Bank of Commerce Building, St. Louis, Mo.

Puga, F. B., P. O. Box 14, El Paso, Texas.
Putnam, Harrington, 404 Washington Ave., Borough of Brooklyn, New York.
Putnam, James L., 52 Wall Street, New York City.
Putney, Albert H., Department of State, Washington, D. C.

Quail, Frank A., 1015 Garfield Building, Cleveland, Ohio.
Quezon, Manuel F., House of Representatives, Washington, D. C.
Quintero, Lamar C., Hennen Building, New Orleans, Louisiana.

Ralston, J. H., Union Savings Bank Building, Washington, D. C.
Ramírez, Clodomiro, Medellín, Colombia.
Ramirez, Thomas, Huerfornas 1993, Santiago, Chile.
Ranck, Samuel H., Librarian, Public Library, Grand Rapids, Michigan.
Raney, M. L., Librarian, Johns Hopkins University, Baltimore, Md.
Ravndal, G. Bie, American Consul-General, Constantinople, Turkey.
Rawle, Francis, 328 Chestnut Street, Philadelphia, Pennsylvania.
Ray, George W., Norwich, New York.
Rayner, Albert W., 6 East Lexington Street, Baltimore, Maryland.
Rebello, Annibal Velloso, Avenida Duque de Loulé, J. P. 46, Lisbon, Portugal.
Reeves, Jesse Siddall, University of Michigan, Ann Arbor, Michigan.
Reina, Jeronimo J., Santa Rosa, Copan, Honduras.
Reinsch, Paul S., American Minister, Peking, China.
Renwick, W. G., 22 Bromley Court, Cambridge, Massachusetts.
Revilla, Clemente J., Areguipa, Lima, Peru.
Riano, Don Juan, Spanish Minister, 2620 16th Street, Washington, D. C.
Ribas, Gomercindo, Camara dos Deputados, Rio de Janeiro, Brazil.
Rice, Paran F., Los Angeles, California.
Rice, William Gorham, Jr., 135 Washington Avenue, Albany, New York.
Rich, A. Burdett, 18 Fairview Heights, Rochester, New York.
Richards, H. Erle, All Souls' College, Oxford, England.
Richards, Preston D., Utah Savings & Trust Co., Salt Lake City, Utah.
Richardson, Charles, 1307 Spruce Street, Philadelphia, Pennsylvania.
Richmond, T. C., Suite 3-6, Mendota Block, Madison, Wisconsin.
Ridder, S. de, Consul of Belgium, 122 9th Street, Louisville, Kentucky.
Riddle, J. W., Union Club, New York City.
Riker, Samuel, Jr., 46 Cedar Street, New York City.
Rinehart, Clement D., Jacksonville, Florida.
Risley, A. W., 703 Hudson Avenue, Albany, New York.
Rivas, Angel César, 1224 15th Street, Washington, D. C.
Rivas, J. Antonio, La Ceiba, Honduras.
Rivero, Antonio Martin, Cuban Minister, 1018 Vermont Ave., Washington, D. C.
Robinson, Elijah, 611 Commerce Building, Kansas City, Missouri.
Robinson, Eugene N., 61 Broadway, New York City.
Robinson, Henry M., 195 South Grand Avenue, Pasadena, California.
Robison, McKee, 414-418 Dime Savings Bank Building, Detroit, Michigan.
Rodríguez, F. Negrón, P. O. Clerk, San Juan, Porto Rico.
Rodriguez, José S., Caracas, Venezuela.

Roe, J. Brewster, 41 Park Row, New York City.
Rogers, Henry Wade, Judge of the U. S. Circuit Court, New Haven, Conn.
Rogers, Lindsay, University of Virginia, University, Virginia.
Romero, José, Esq., Betlemitas y San Francisco, Mexico City, Mexico.
Root, Elihu, 31 Nassau Street, New York City.
Rosenberg, Louis J., 809-12 Ford Building, Detroit, Michigan.
Rosenwald, J., care of Sears, Roebuck & Co., Chicago, Illinois.
Ross, Thomas D., Fort Worth, Texas.
Round, A. C., 96 Broadway, New York City.
Rowe, L. S., University of Pennsylvania, Philadelphia, Pennsylvania.
Rubi, Francisco, Ocotopeque, Honduras.
Rudolph, Z. T., Birmingham, Alabama.
Rugg, Arthur P., 488 Pleasant Street, Worcester, Massachusetts.
Russell, B., Supreme Court of Nova Scotia, 70 Morris Street, Halifax, N. S.
Russell, Charles H., 15 Broad Street, New York City.

Sachs, Ralph L., 28 West 22d Street, New York City.
Sagrera, P. M., 1750 Cambridge Street, Cambridge, Massachusetts.
Saguier, Fernando, Rodriguez Peña 1673, Buenos Aires, Argentina.
Salomón, Alberto, Ayacucho 410, Izquierda, Lima, Peru.
Sanders, William B., Perry Payne Building, Cleveland, Ohio.
Sands, William Franklin, Central Aguire, Porto Rico.
Sarabasa y Blanco, Ricardo, Cuba 52, Habana, Cuba.
Sarmiento Laspiur, Eduardo, Cangallo 456, Buenos Aires, Argentina.
Saxe, Martin, 280 Broadway, New York City.
Sayre, Francis B., Williamstown, Massachusetts.
Schmavonian, A. K., American Embassy, Constantinople, Turkey.
Schneider, Victor, 101 Leiprigerstrasse, Berlin, Germany.
Schofield, William, 136 Summer Street, Malden, Massachusetts.
Scholle, Gustave, American Legation, Havana, Cuba.
Schubring, E. J. B., Badger Block, Madison, Wisconsin.
Schurz, Carl L., 49 Wall Street, New York City.
Schurz, James R., 755 Broad Street, Newark, N. J.
Schuster, Edward, 49 Wall Street, New York City.
Schwan, Theodore, 1310 20th Street, N. W., Washington, D. C.
Scotten, R. M., 4 Story Street, Cambridge, Massachusetts.
Sellman, F. R., Calpella, California.
Semple, Lorenzo, 2 Rector Street, New York City.
Senni, Carlo, Italian Consulate-General, Jerusalem, Palestine.
Severance, C. A., Merchants National Bank Building, St. Paul, Minnesota.
Shand, Miles M., Department of State, Washington, D. C.
Shanklin, Arnold, Pierce Oil Corporation, Mexico, Mexico.
Sharp, William G., American Embassy, Paris, France.
Shaw, Albert, 13 Astor Place, New York City.
Shearn, Clarence J., 140 Nassau Street, New York City.
Shen, T. C., 2006 Columbia Road, Washington, D. C.
Sherman, Gordon E., Morristown, Morris County, N. J.

Sherrill, Charles H., 30 Broad Street, New York City.
Shidehara, K., Japanese Embassy, 10 Grosvenor Square, London, England.
Shields, John K., United States Senate, Washington, D. C.
Short, William H., 507 Fifth Avenue, New York City.
Siaca Pacheco, Ramón, P. O. Box 179, San Juan, Porto Rico.
Siddons, F. L., Justice of the D. C. Supreme Court, Washington, D. C.
Simpson, George H., Columbus, Montana.
Simpson, John W., 62 Cedar Street, New York City.
Sims, F. W., Louisa, Virginia.
Sites, C. M. Lacey, Anglo-Chinese College, Foochow, China.
Skinner, Robert P., American Consul-General, London, England.
Slayden, James L., House of Representatives, Washington, D. C.
Smiley, Daniel S., Mohonk Lake, New York.
Smith, Edward N., Watertown, New York.
Smith, Edwin W., Carnegie Building, Pittsburgh, Pennsylvania.
Smith, Harrison B., Coyle and Richardson Building, Charleston, W. Virginia.
Smith, Roy C., Capt., Navy Department, Washington, D. C.
Smith, Walter George, 1006 Land Title Building, Philadelphia, Pennsylvania.
Smith, William Walker, Department of State, Washington, D. C.
Smithers, William W., 1100 Land Title Building, Philadelphia, Pennsylvania.
Snow, Alpheus H., 2013 Massachusetts Avenue, Washington, D. C.
Solar, Amador F. del, Ibanola 325, Lima, Peru.
Sotelo Matti, Ramon, 111 Juan Luna Street, Manila, Philippine Islands.
Spalding, Lyman A., 52 William Street, New York City.
Speranza, Gino C., Bedford Village, New York.
Spivey, Thomas Sawyer, care of Victor Safe Lock Co., Cincinnati, Ohio.
Spooner, John C., 32 Nassau Street, New York City.
Sprague, Henry W., Buffalo, New York.
Stanclift, Henry C., Cornell College, Mount Vernon, Iowa.
Stanwood, Daniel C., Augusta, Maine.
Stapleton, Luke D., Borough Hall, Brooklyn, New York.
Staunton, S. A., Navy Department, Washington, D. C.
Stearns, C. D., U. S. Naval Station, Paga Paga, Tutuilla, American Samoa.
Steefel, Lawrence D., 110 Merriman Street, Rochester, New York.
Steenerson, H., House of Representatives, Washington, D. C.
Steiner, Bernard C., Enoch Pratt Free Library, Baltimore, Maryland.
Steinhart, Frank, Habana, Cuba.
Stetson, Francis Lynde, 15 Broad Street, New York City.
Stevens, Frederick C., House of Representatives, Washington, D. C.
Stevens, W. C., Lawton, Oklahoma.
Stewart, Glenn, care of Department of State, Washington, D. C.
Stitt, Thomas L., 942 Otis Building, Chicago, Illinois.
Stockbridge, Henry, 95 Gunther Building, Baltimore, Maryland.
Stockton, Charles H., 2019 O Street, N. W., Washington, D. C.
Storey, Moorfield, 735 Exchange Building, Boston, Massachusetts.
Stowell, Ellery Cory, Columbia University, New York City.
Strauss, Charles, 141 Broadway, New York City.

Streeter, Frank S., 234 North Main Street, Concord, N. H.
Streit, George, University of Athens, Athens, Greece.
Strisower, Leo, Lichtenfelsgasse 5, Vienna 1, Austria.
Strong, Charles A., 1039 Mills Building, San Francisco, California.
Strupp, Karl, Reuterweg 40, Frankfurt A. M., Germany.
Sturges, Rush, 49 Westminster Street, Providence, R. I.
Suárez, José León, Calle Bartolomé Mitre No. 3118, Buenos Aires, Argentina.
Suárez, Simon Planas, Minister of Nicaragua, Lisbon, Portugal.
Suaréz, M., Senor Don Eduardo, Embajada de Chile, 1329 K Street, N. W., Washington, D. C.
Sugden, Herbert W., 27 Ware Street, Cambridge, Massachusetts.
Sullivan, Mark, Collier's Weekly, New York City.
Sulzer, William, 115 Broadway, New York City.
Summerlin, G. T., American Legation, Santiago, Chile.
Swayze, Francis J., 765 High Street, Newark, N. J.
Symmers, James Keith, 59 Wall Street, New York City.

Tachi, Sakutaro, Imperial University, Tokyo, Japan.
Taft, Henry W., 40 Wall Street, New York City.
Taft, Theodore M., 15 William Street, New York City.
Taft, William Howard, New Haven, Connecticut.
Tagliaferro, José A., Apartado 316, Caracas, Venezuela.
Tai, En Sai, Livingston Hall, Columbia University, New York City.
Talcott, Charles A., Utica, New York.
Tanzer, Laurence Arnold, 32 Broadway, New York City.
Tappan, J. B. C., 49 Wall Street, New York City.
Tatman, Chas. T., 900 Slater Building, Worcester, Massachusetts.
Taylor, Daniel G., 1806 Third National Bank Building, St. Louis, Missouri.
Taylor, George W., Demopolis, Alabama.
Taylor, Hannis, 1415 H Street, N. W., Washington, D. C.
Taylor, Howard, 35 Wall Street, New York City.
Telleria, Pedro Hermoso, Sur 1, No. 69, Caracas, Venezuela.
Temple, Henry W., House of Representatives, Washington, D. C.
Téran Liscano, Pablo D., Malecon Núm. 1107, Guayaquil, Ecuador.
Terres, John B., American Consul, Port au Prince, Haiti.
Terry, J. W., Galveston, Texas.
Thacher, Archibald G., 59 Wall Street, New York City.
Thatcher, Thomas, 62 Cedar Street, New York City.
Thayer, Rufus Hildreth, 332 State Street, Albany, New York.
Thelen, Max, 2320 Bowditch Street, Berkeley, California.
Thomaides, George Th., Columbian Building, Washington, D. C.
Thomas, William, 310 Sansome Street, San Francisco, California.
Thompson, Frank E., P. O. Box 626, Honolulu, Hawaii.
Thurston, Edward S., College of Law, University of Minnesota, Minneapolis, Minnesota.
Tice, David, 38 Main Street, Lockport, New York.
Tillman, John P., Empire Building, Birmingham, Alabama.

Todd, J. Stanley, Collingswood Buildings, Newcastle upon Tyne, England.
Tompkins, Hamilton B., 80 Broadway, New York City.
Toro C., Bernardino, Minister of Chile, Caracas, Venezuela.
Toro, Emilio del, Sau Juan, Porto Rico.
Torrey, W. J., 726 Jefferson Avenue, Scranton, Pa.
Tower, Charlemagne, 228 S. 7th Street, Philadelphia, Pennsylvania.
Trabue, Edmund F., Columbia Building, Louisville, Kentucky.
Tracey, James F., 25 North Pearl Street, Albany, New York.
Trueblood, Benjamin F., 1327 Girard Street, N. W., Washington, D. C.
Tryon, James L., 31 Beacon Street, Boston, Mass.
Tucker, George Edwin, 5 Peking Road, Shanghai, China.
Turner, A. Campbell, 21 Claremont Avenue, New York City.
Turner, George, Fernwell Block, Spokane, Washington.
Turney, W. W., El Paso, Texas.
Turrell, Edgar A., 76 William Street, New York City.
Tutherly, William, Laurel, Delaware.

Uclés, Carlos Alberto, Tegucigalpa, Honduras.
Uclés, Enrique B., San Pedro Sula, Department de Cortes, Honduras.
Underwood, E. Marvin, Assistant Attorney General, Department of Justice, Washington, D. C.
Untermeyer, Samuel, 37 Wall Street, New York City.
Updyke, F. A., Hanover, New Hampshire.
Ureta E., José, Santiago, Chile.
Uribe, Antonio José, Calle 12, Núm. 161, Bogotá, Colombia.
Urrutia, Ricardo de J., Tegucigalpa, Honduras.

Vaglio M., Humberto, Consul-General of Costa Rica, Panama, Panama.
Valdés, Ramón M., Panama, Panama.
Valentini, E. E., Tiburcio 18, Mexico, D. F., Mexico.
Valladares, Rafael Max, Caracas, Venezuela.
Valladon, Viriato Gutierrez, Obrapia 91, Habana, Cuba.
Van Derlyn, Theodore Napoleon, Apt. 4 M, 434 West 120th Street, New York City.
Van Fleet, W. C., 300 Post Office Building, San Francisco, California.
Van Norman, Louis E., 2049 Park Road, N. W., Washington, D. C.
Vasquez M., José Miguel, Quito, Ecuador.
Vasquez, Mariano, Tegucigalpa, Honduras.
Vaughan, Athelstan, 185 Newton Avenue, Astoria, New York.
Veidl, Erik, V. Margaretenstrasse 105, Vienna, Austria.
Velarde, Eduardo, Consul of Mexico, Kansas City, Missouri.
Vertrees, John J., Nashville, Tennesee.
Victor, Royall, 49 Wall Street, New York City.
Vietor, E. K., Richmond, Virginia.
Vinacke, Harold M., Princeton, New Jersey.
Viti, Marcel A., 818 Girard Building, Philadelphia, Pennsylvania.
Vogel, Leo, Pappritzerweg 7, Wachwitz B., Dresden, Germany.

Wales, Edward H., Hyde Park, Dutchess County, New York.
Walker, Roberts, Scarsdale, New York.
Walker, W. B., 56 William Street, New York City.
Wambaugh, Eugene, Harvard Law School, Cambridge, Massachusetts.
Ward S., Carlos E. A., P. O. Box 156, Valparaiso, Chile.
Ward, Henry G., 79 Wall Street, New York City.
Warren, Charles, Department of Justice, Washington, D. C.
Warren, Charles B., Union Trust Building, Detroit, Michigan.
Washburn, Albert H., 12 Broadway, New York City.
Wasson, M. H., P. O. Box 47, Spokane, Washington.
Watres, Lawrence H., 602 Connell Building, Scranton, Pennsylvania.
Watrous, George D., 121 Church Street, New Haven, Connecticut.
Way, Royal Brunson, Beloit College, Beloit, Wisconsin.
Wehberg, Hans, 86 Julicher Str., Drusseldorf 102, Germany.
Weissheimer, J. W., 2nd Lieut. 17th Infantry, Eagle Pass, Texas.
Wellington, George B., 17 First Street, Troy, New York.
Wells, Leslie C., Clark College, Worcester, Massachusetts.
Wendehake, José Rafael, 119 San Vicente a Medina, Caracas, Venezuela.
West, Duval, San Antonio, Texas.
West, Frank N., Lock Box 153, Vineyard Haven, Massachusetts.
Westengard, Jens I., Bangkok, Siam.
Wheeler, Everett P., 27 William Street, New York City.
Wheless, Joseph, Carleton Building, St. Louis, Missouri.
Whipple, Sherman L., Tremont Building, Boston, Massachusetts.
White, Andrew D., Ithaca, New York.
White, Charles, D., Brooklands, Chagford, Devon, England.
White, Henry, 2620 16th Street, N. W., Washington, D. C.
White, James, Commission of Conservation, Ottawa, Canada.
White, J. du Pratt, Nyack, New York.
White, Thomas Raeburn, West End Trust Building, Philadelphia, Pa.
White, William Wallace, 233 Broadway, New York City.
Whitman, Allan H., 82 Devonshire Street, Room 609, Boston, Massachusetts.
Whitmore, Chester W., 134 East Main Street, Ottumwa, Iowa.
Whittuck, E. A., Claberton Manor, Bath, England.
Wicker, Cyrus French, American Legation, Managua, Nicaragua.
Wickersham, Geo. W., 40 Wall Street, New York City.
Wigmore, John H., 207 Lake Street, Evanston, Illinois.
Wilcox, Ansley, 684 Ellicott Square, Buffalo, New York.
Wilcox, William R., Tribune Building, New York City.
Willard, Eugene Sands, 45 Pine Street, New York City.
Williams, Geo. C. F., 990 Prospect Avenue, Hartford, Connecticut.
Williams, Harold P., Rooms 606-610, 60 Congress Street, Boston, Mass.
Williams, John Sharp, The Capitol, Washington, D. C.
Williams, William, 1 West 54th Street, New York City.
Williamson, David A., Covington, Va.
Williston, Samuel, Harvard University, Cambridge, Massachusetts.
Willoughby, W. W., Johns Hopkins University, Baltimore, Maryland.

Wilson, George G., 6 Acacia Street, Cambridge, Massachusetts.
Wilson, Hugh R., American Legation, Guatemala, Guatemala.
Wilson, Huntington, 1608 K Street, Washington, D. C.
Wilson, J. E., 528 S. Fifth Avenue, Chicago, Illinois.
Wilson, James H., 1305 Rodney Street, Wilmington, Delaware.
Wilson, John F., Spahr Building, Columbus, Ohio.
Wilson, Nathaniel, 622 F Street, N. W., Washington, D. C.
Wilson, Woodrow, White House, Washington, D. C.
Windsor, P. L., University of Illinois, Urbana, Illinois.
Winslow, Alfred A., American Consul-General, Auckland, New Zealand.
Wirth, Frederick, American Embassy, Constantinople, Turkey.
Wise, Edmond E., 19 William Street, New York City.
Wollman, Henry, 20 Broad Street, New York City.
Wong, Charles A., P. O. Box 1006, Honolulu, Hawaii.
Wood, Frank H., Hamilton College, Clinton, New York.
Woodward, R. S., 65 The Dresden, Washington, D. C.
Woolsey, John M., 27 William Street, New York City.
Woolsey, Lester H., Department of State, Washington, D. C.
Woolsey, Theodore S., 250 Church Street, New Haven, Connecticut.
Wright, Hamilton, 1328 28th Street, Washington, D. C.
Wright, J. Butler, American Embassy, Rio de Janeiro, Brazil.
Wu, Chao Chu, 3 Gordon Road, Shanghai, China.
Wyvell, Manton M., State Department, Washington, D. C.

Yamakawa, T., Navy Department, Tokyo, Japan.
Yanes, Eliodoro, San Antonio 734, Santiago, Chile.
Yen, Weiching, W., 218 Kufurstendamm, Berlin, W. 15, Germany.
Yoshida, Isaburo, Japanese Embassy, London, England.
Young, H. O., The Capitol, Washington, D. C.
Young, J. Edwin, West 308, Wardman Courts, Washington, D. C.
Young, McGregor, Continental Life Building, Toronto, Canada.
Yrigoyen, Pedro, Ayacucho (Rifa) 332, Apartado 667, Lima, Peru.
Yung, Kwai, Chinese Legation, Washington, D. C.

Zabriskie, George, 49 Wall Street, New York City.
Zavala, J. Eliodoro, Calle de Arequipa 92, Puno, Peru.
Zeballos, E. S., 1070 Libertad Street, Buenos Aires, Argentina.
Zepeda, Maximo H., Managua, Nicaragua.
Zeranos Pinto, César de, San Martin 233, Buenos Aires, Argentina.
Ziegemeier, H. J., General Board, Navy Department, Washington, D. C.
Zubizarreta, O., Mercaderes 22, Habana, Cuba.

INDEX